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Contents.

Cases Reported this Week.

CURRENT TOPICS.

On Tuesday, the 26th inst., Mr. Justice Stirling will commence the hearing of witness actions, and continue the same from day to day (with the exception of Monday, the 4th of March) until the 9th of March; and during that period the motions and unopposed petitions of Mr. Justice Stirling will be heard by Mr. Justice Kekewich on Thursdays and Saturdays.

The order transferring a hundred actions to Mr. Justice Romer was signed on the 19th inst. Although the order is not yet published, we are able to give from the cause book a list of the actions transferred in the order in which they there stand. The hearing of the transferred actions will be commenced as soon as the actions remaining in the book have been disposed of.

Before the coming into operation of the project for filing original orders in the Chancery Division we took occasion to call attention to what was in contemplation, and to point out that no material object was to be attained by the proposed change in the ancient practice of copying all orders on to the record of the court, and permitting suitors to have possession of the original. No protest was made by members of the profession against the alteration in the practice, but now that the change has been in operation some little time, dissatisfaction (only too late) with the new practice is shewn by managing clerks and others who were accustomed to the old practice and found it worked well.

We print elsewhere draft rules under the Companies (Winding-up) Act, 1890, which have been published pursuant to the Rules Publication Act, 1893. The first annuls rule 45 of the Rules of 1890, which provided that, where practicable, and unless the court specially directed to the contrary, the first meetings of creditors and contributories should not be held until after the statement of affairs prescribed by section 7 of the Act of 1890 had been submitted to the official receiver; and the second diminishes the strictness of rule 63 (2), under which, for the court to give immediate effect to the result of the meetings of creditors and contributories, it was necessary that the determination of each meeting should be unanimous. It is now proposed that the court shall be enabled to act forthwith whenever the two meetings have each passed the same resolutions, or resolutions identical in effect. Otherwise the court will, as at present, on the application of the official receiver, fix a day for considering the resolutions and determinations of the meetings, deciding differences, and making such appointments and orders as shall be necessary.

A ruling of great importance has been given by the Speaker in connection with the London Valuation and Assessment Bill, which had been introduced in the House of Commons as a private Bill. The Bill proposed to repeal five public Acts of Parliament, and the Bar Committee have already remonstrated with the Lord Chancellor on the extreme inconvenience of repealing Acts which appear on the Statute Book by Acts not printed there, and of which it may be difficult to obtain information. But the Bill had other characteristics which differentiated it widely from ordinary private Bills. It was probably enough that it affected the whole metropolis, and the Speaker adduced precedents shewing that Bills of so extensive a nature were properly treated as public Bills. But, further, it proposed to alter the basis of taxation for imperial as well as for local purposes, and it created a new tribunal to deal with questions of assessment. Both in respect of the magnitude of the interests involved, and the nature of the changes which it was proposed to make, the Bill was essentially one requiring to be dealt with as a public Bill, and the Speaker intimated his opinion accordingly.

In view of the forthcoming county council election it should be noted that, according to the decision of the Court of Appeal in *Knill* v. *Towse* (38 W. R. 521, 24 Q. B. D. 697), a person registered as elector in more than one electoral division is only entitled to vote in one of such divisions. Under section 2 of the Local Government Act, 1888, a county council is to be elected in

the same manner as the council of a borough divided into wards, and section 75 incorporates Part III. of the Municipal Corporations Act, 1882, so far as its provisions are consistent with the Act of 1888. According to the Act of 1882 it is clear that, in the election of councillors for a borough divided into wards, no person is entitled to vote in more than one ward. This is expressly provided by sub-section (2) of section 51, which is contained in Part III. Hence it follows that, in the election of county councillors, no person is entitled to vote in more than one electoral division, unless there is ground for saying that the provision of section 51 (2) of the Act of 1882 is inconsistent with the Act of 1888. In *Knill* v. *Towse* an attempt was made to establish such inconsistency. Section 2 (4) of the Act of 1888 says that the persons entitled to vote at the election of county councillors shall be the persons registered as electors under the County Electors Act, 1888; and section 7 of this last Act, in directing how the roll of county electors is to be made up, provides that nothing in the section shall prevent an elector from being registered in more than one division register. It was contended that this provision for registration in more than one division was inconsistent with the rule, drawn from the analogy of municipal elections, that voters should vote only in one division. But the Court of Appeal saw no reason why an elector should not be registered in more than one division, and yet be entitled to vote in one only, and held that the alleged inconsistency did not exist. It is clear, therefore, that at the ensuing county council election persons who are registered in more than one division will have only one chance of recording their vote.

Our correspondent "H. H.," whose letter we publish in another column, calls our attention to an apparent inaccuracy in our article "Time for Defence under Order 14" (*ante*, p. 260). We are glad to receive his correction, as it will enable us to drive home still more firmly our contention that the official form of order giving conditional leave to defend under order 14 is an extremely bad form, and creates unnecessary confusion and difficulty in practice. The passage in our article to which our correspondent refers is as follows: "Let us complete the order as it is commonly made. 'It is ordered that if the defendant pay into court within *ten* days the sum of £ , he be at liberty to defend the action,' &c." Our correspondent says that the usual time filled in in drawing up these orders is "a week," unless the master fixes the time. Our attention happens to have been called to several of these orders in which the master had fixed the time at ten days, and in more than one case at fourteen days. But we merely took the ten days' fixture as an illustration, and we are grateful to our correspondent for calling our attention to the seven days' fixture, as he has thereby furnished us with an additional reason for the alteration of this misleading form of order. Under ord. 21, r. 8, a defendant who obtains leave to defend under order 14 has eight days from the date of the order within which to deliver his defence. If the order is unconditional he is in default of defence on the ninth day, and the plaintiff can enter judgment in default. If, however, the order is in the form quoted above, he may have either seven, ten, or fourteen days given him to pay money into court. If he does pay the money into court, he thereupon obtains leave to defend, but not otherwise. We will suppose that the order is dated the 1st of January. If the order allows him seven days to pay into court, he pays the money in on the 8th of January (ord. 64, r. 12). Now, if ord. 21, r. 8, applies to such a case, the 9th of January is his last day for defence—*i.e.*, eight days from the date of the order giving leave to defend—and the plaintiff can enter judgment in default on the 10th of January, two days after the defendant has qualified for defence by payment into court. But suppose the master gives the defendant ten days, as he frequently does, to pay into court and qualify for defence; then, if ord. 21, r. 8, applies, the plaintiff can enter judgment in default on the 10th of January, while the defendant has all day on the 11th of January to pay into court and qualify for defence, which is absurd. Either ord. 21, r. 8, applies to both cases, or it does not apply to either. The probability is that it does not apply to either, but that *the order giving conditional leave to defend becomes first operative as affecting the time for defence on the day when the payment into court is made whereby the defendant first acquires the right to defend.* If we can adopt this construction it can be applied equally to all such conditional orders, no matter what time fixture may be inserted for payment in.

But we are face to face with a new difficulty if we adopt the interpretation which we have italicized above, for then we are left without any rule, order, or case which fixes the time for defence. It is, we are informed, the practice of the Judgment Department to allow the defendant in such cases eight days from the payment into court to deliver defence, but this practice is based merely on a common-sense view of the fitness of things, and has, we believe, no authority whatever. There are three rules fixing the time for defence. One gives ten days from delivery of the statement of claim, or the time limited for appearance, whichever shall be last (ord. 21, r. 6). Another gives ten days from entry of appearance where no statement of claim has been delivered or required (ord. 21, r. 7). The third, eight days from the date of an order under order 14 giving leave to defend if no other time is fixed by the order (ord. 21, r. 8). If the last-named rule cannot be applied to these conditional orders—as we think we have shewn it cannot—and the other two do not apply, which they obviously do not, then there is no time fixed by the rules. This is no fault of the rules, because, as we pointed out in our previous article, all the forms of order prescribed by the Rules of 1883 were drawn with a blank space to be filled up by the master fixing the time for defence (Appendix K, Nos. 7, 8, 9). We should very much like to know on what authority this part of the prescribed form, which is an essential part of conditional orders, was omitted. The case of *Egerton* v. *Anderson* (W. N., 1884, p. 95) is no authority for omitting the time-fixture, but only for discontinuing the practice of making the time for defence count from the service of the order. Every order under order 14 which makes the right to defend contingent on a future event ought, in our opinion, to fix the time for defence.

It seems possible that the decision of Vaughan Williams, J., in *Broderip* v. *Salomon & Co.* (reported elsewhere) will have a serious effect on the turning of private businesses into limited liability companies in cases where the proprietor or proprietors of the business are practically the only persons interested in the company. In the case in question Mr. Salomon converted his business into a company, the signatories to the memorandum of association being himself and six members of his family. Part of the consideration for the transfer to the company of the stock-in-trade of the business was the issue of £10,000 of debentures charged on all the property of the company, and ultimately, when the company came to be wound up, it was sought to obtain priority for the debentures over the general creditors of the company. Vaughan Williams, J., prevented this result by the application of a doctrine which deprives the proprietor of the business in such a case of the benefit of limited liability. The company, he held, was no more than the agent of Mr. Salomon for carrying on his business, and against all expenses incurred in the business Mr. Salomon was liable to indemnify it. Moreover, to enforce this indemnity, the company were entitled to a lien on the assets, which took precedence of any claim Mr. Salomon might have in respect of the debentures. The result was to give the general creditors of the company priority over the debentures, while, in the event of the assets being insufficient to pay them in full, Mr. Salomon apparently would be personally liable. The doctrine seems to depend entirely on the company being the agent of, and practically identical with, the former proprietor of the business, and hence it does not imperil private companies generally. Wherever a substantial part of the shares are held by new members, the company is no longer the mere agent of the vendor. It has an independent existence, and the decision does not suggest that the vendor has any concern with the debts of the company. Where, however, this is not the case, and the vendor to the company is practically identical with the company, it seems, if

the decision stands, that he cannot rely on the Companies Acts to give him limited liability.

THE DECISION of the Court of Appeal in *Trego* v. *Hunt* (which we report elsewhere) applies, under somewhat novel circumstances, the principle established by *Pearson* v. *Pearson* (32 W. R. 1006, 27 Ch. D. 145). It seems reasonable that when a man sells the goodwill of his business he shall not be permitted immediately to set up a rival business and solicit his former customers; and in *Labouchere* v. *Dawson* (20 W. R. 309, L. R. 13 Eq. 322) Lord ROMILLY, M.R., laid down the law accordingly. He held that the vendor of the goodwill was not at liberty to depreciate the thing which he sold, and that the soliciting of old customers was a direct act of depreciation which ought to be restrained. But in *Pearson* v. *Pearson* this wholesome principle was given up by the Court of Appeal on the ground that it was impossible to say how far it was to extend. It was admitted, so COTTON, L.J., pointed out, that a person who had sold the goodwill of his business might set up a similar business next door and say that he was the person who carried on the old business, yet such proceedings manifestly tended to prevent the old customers from going to the old place. If one mode of depreciating the goodwill was permitted, why not another? In consequence, therefore, of the difficulty of drawing the line between what was permitted and what was not, the decision in *Labouchere* v. *Dawson* was overruled. The vendor of the goodwill was clearly permitted by his acts to invite the old customers to deal with him, and not with the purchaser, and consequently he was permitted to do so also by direct solicitation. The principle of depreciating from the value of the goodwill was thus abandoned, and since that time the value of goodwill has depended almost entirely on the covenant against rival trading into which the vendor is required to enter. In the absence of such a covenant the vendor has a free hand. In *Trego* v. *Hunt* the goodwill of a partnership business was on the termination of the partnership to belong to the plaintiff, who was one of the partners, but there was no stipulation that the other partners should not compete. The defendant, another partner, made use of his opportunities during the partnership to extract from the partnership books the names and addresses of the customers of the firm, and the plaintiff sought to restrain him. Inasmuch, however, as he was only making preparations to act upon the termination of the partnership on his legal right, the Court of Appeal affirmed the decision of STIRLING, J. (*ante*, p. 263), and forebore to interfere. *Pearson* v. *Pearson* would justify him in soliciting the customers of the partnership business, and his existing right of access to the partnership books enabled him to fortify himself with the necessary information.

THE COURT OF APPEAL in dismissing the appeal in *Reg.* v. *Justices of London* (*ante*, p. 321) did not base its decision upon the same ground as that of the Divisional Court. The case raised the question whether a court of quarter sessions has power to refuse to order an unsuccessful appellant in a licensing appeal to pay the licensing justices their costs of the appeal. Section 29 of 9 Geo. 4, c. 61, provides that "such court is hereby required to adjudge and order that the party having appealed or given notice of his intention to appeal shall pay to the justice to whom such notice shall have been given such sum, by way of costs, as shall in the opinion of such court be sufficient to indemnify such justice from all cost and charge whatsoever to which such justice may have been put in consequence of his having had served upon him notice of the intention of such party to appeal." It was argued that that section had been repealed by implication by certain sections of the Summary Jurisdiction Acts, 1879 and 1884. The Divisional Court, without deciding that point, refused the *mandamus* asked for, on the ground that, the court of quarter sessions having heard and determined the question, it was immaterial whether its decision was right or wrong. In commenting upon the judgments of the Divisional Court we pointed out (*ante*, p. 123) that the consequence would be to deprive the High Court of all control over quarter sessions. This view seems to have prevailed in the Court of Appeal, for LINDLEY, L.J., in his judgment clearly lays down that the extent of the jurisdiction of an inferior court must necessarily be ascertained before the question whether the court has exceeded it, or refused to exercise it, can be determined, and a mistake made by an inferior court as to the extent of its own jurisdiction can be corrected by *mandamus*, *certiorari*, or prohibition according to the circumstances of the case. Unless this were so, his lordship went on to say, there would be no method of controlling inferior courts. On the main question in the case the Court of Appeal decided that the costs referred to by section 29 of 9 Geo. 4, c. 61, only included the costs occasioned by the service of the notice of appeal from the licensing justices, as provided by section 28, and with regard to those costs the court held that the court of quarter sessions has no discretion; and that, if a case occurred in which those were the only costs incurred by the licensing justices, a *mandamus* would go to the quarter sessions to compel the court to exercise its discretion in the only way in which it could be exercised—viz., by making an order for the payment by the appellant of such costs. In the present case, however, as the licensing justices had appeared and actively opposed the appeal, the court held that they had become "parties" to it, and that the court of quarter sessions had the same discretion in the matter of refusing to order the appellant to pay the costs of the licensing justices as in any other appeal. The Court of Appeal, therefore, on this ground, refused the *mandamus* asked for, and dismissed the appeal.

THE ENTIRE EXTINCTION of the second preference and ordinary shares upon the reduction of capital in *Re St. Thomas's Floating Dock Co.* (reported elsewhere), notwithstanding the opposition of some of the second preference shareholders, was no doubt a somewhat strong decision. True it is that on a winding up the second preference and ordinary shareholders would have got nothing, but it was not proposed to wind up, but to carry on the dock as a going concern. As the preferential dividends were contingent on each year's profits and non-cumulative, there was at least a chance of an occasional dividend for the second preference shareholders, and this chance, one would think, should have preserved them from total extinction. In these days of globe trotters there is always a chance for even such an out-of-the-way place as St. Thomas, and *non constat* that regular liners might not call there before the dock is worn out. Still, the matter being one of judicial discretion, and the prospect of any dividend beyond the first preference interest being extremely remote, it would be wrong to say that the decision went too far. The case is interesting as being, we believe, the first in which an entire group of shareholders have been extinguished in the face of the active opposition of some of their number.

OUR COMMERCIAL COURT.

THE first thought which suggests itself, when we come to consider the now accomplished fact of the establishment of a commercial court, is whether it has been established to meet a public demand, or to create one. Are the commercial community anxious to have a commercial court to go to, or are our judicial authorities endeavouring to win back the confidence of commercial men so as to incline them to bring their disputes once more into our courts? It is as well to look this question fairly in the face, because it is the question which commercial men are asking themselves to-day, and upon the answer which can be given and the reasons shown for it depends, if we mistake not, much of the success of the new commercial court. A full and true appreciation by lawyers generally of what the judges have done, and why they have done it, must form an important element in the success which we hope will attend this new departure in legal procedure. Commercial men as a class enjoy a well-earned reputation for hard-headed common sense in all matters which concern their own interests, and before they will avail themselves of the new advantages offered them by the judges they will have to be convinced that they are real advantages, and not mere illusory promises; that they comprise a genuine offer to determine trade disputes so cheaply

and expeditiously that there will be a balance of convenience in choosing a judge instead of an arbitrator to settle such disputes. It cannot be expected that commercial men will study the Judges' Regulations. Still less can we expect them to associate those regulations with recent enactments and Rules of Court which have paved the way for them. It rests largely with lawyers themselves to make known the main principles of recent amendments of procedure which have had for their object the removal of those defects which are generally believed to have caused the withdrawal of commercial causes from our courts.

It is now nearly three years ago since we first urged on the authorities (36 SOLICITORS' JOURNAL, 437) the desirability of establishing a special list of commercial causes; a special judge to hear them (we named Mr. Justice MATHEW in particular); and a simplified procedure embracing an optional agreement by the parties that the decision of the commercial judge should be final. We are therefore glad to see that the Judges' Regulations concede these three demands. The main causes of the decrease of commercial actions have, in our opinion, been the multiplicity of appeals, the delay and expense of a complicated procedure, and the certainty of having to pay costs whether successful or unsuccessful. The commercial man who went to law had always before him the possibility of being dragged through a long period of pleadings and interlocutory appeals before his case could be heard, and he, not unnaturally, set to work to provide himself with a tribunal of his own which settled his disputes with rapidity, economy, and finality, though not always, it must be confessed, in accordance with law or justice. The success of these commercial arbitration courts has led their promoters to extend their influence beyond its legitimate sphere, and there are not wanting signs at the present time to shew that they by no means command the entire confidence of commercial men. The applications which are made to our courts to restrain arbitrations and to set aside awards have long ago disclosed the fact that much is done under the name of arbitration which is not justice, and is certainly not according to law.

It is at this juncture that our judges have established a commercial court, after having amended procedure by imposing a strong check on interlocutory appeals, and by establishing a special procedure for summary trial without pleadings.

Bearing in mind that the great requirements of commercial men in the settlement of disputes are rapidity, economy, and finality, combined with legal justice, let us see how far recent rules and regulations have placed these requirements within their reach.

In the first place we have the important provisions of order 18A, under which a plaintiff may commence an action for trial without pleadings by indorsing his writ with a sufficient statement of the nature of his claim, and with a notice that, if the defendant appears, he intends to go to trial without pleadings. In such an action the *onus* rests on the defendant to shew the necessity of pleadings, and unless he succeeds in doing this within ten days after his appearance, the plaintiff may deliver twenty-one days' notice of trial without pleadings. Subject to certain other provisions in this order by way of safeguards a plaintiff may, in a proper case, set his action down for trial within six weeks after the issue of the writ. Order 18A came into operation on the 1st of January, 1894, and upwards of 120 actions under it were entered for trial before the close of the year. It is not possible to say how many writs were issued under the terms of the order, because a great number of them were doubtless for liquidated claims which were disposed of by judgment in default of appearance. Nor are we in a position at present to say how many of the actions tried without pleadings in 1894 were commercial cases within the definition contained in the Judges' Regulations. There is, however, good reason to believe that a large proportion of the actions so tried were commercial actions. Order 18A is not confined to any particular kind of action, but we cannot doubt that it was specially designed to meet the requirements of commercial cases. Nearly all the 120 actions entered for trial without pleadings in 1894 were disposed of completely within three months from the issue of the writ. They would have been disposed of still more rapidly but that they came into the general list. Those of them which are commercial actions will probably be determined in future by the commercial court within two months from the issue of the writ. We may regard order 18A as one of the three main thoroughfares of procedure leading to the commercial court.

The two other main thoroughfares are order 14, and the ordinary action, within the definition of a commercial cause, guided in its course by the judge of the commercial court under a summons for directions. There is nothing in the Judicature Acts or Rules which applies exclusively, or even specifically, to commercial causes. This is obviously right. Indeed, as we have previously remarked (*ante*, p. 243), we have yet to learn that the special facilities given by the new regulations for commercial causes ought not to apply to litigation generally. However, all the facilities contained in Rules of Court are of general application, and the process of separation can only take place by leave of the judge of the commercial court.

According to the definition contained in the Judges' Regulations (No. 1), "Commercial causes include causes arising out of the ordinary transactions of merchants and traders; amongst others, those relating to the construction of mercantile documents, export or import of merchandise, affreightment, insurance, banking and mercantile agency, and mercantile usages." Two ways are provided for assigning such actions to the commercial court. Either party may apply by summons at any time before the action comes on for trial (Regulations 2, 4) to have the cause entered in the commercial list. Or, on the other hand, a summons for directions may be taken out under order 30. In both cases the summons must be inserted in the commercial summons list to be heard by the judge charged with commercial business.

As to the time when the application is to be made the parties are left entirely free. By the terms of order 30 either party may apply at any time for directions. Parties, therefore, are left to choose for themselves whether they will come to the commercial court after or before delivery of pleadings, subject, of course, to the complete discretion of the judge over the course of the action if either party applies for directions. In the case, therefore, of an action under order 18A for trial without pleadings, if it be a commercial cause, the plaintiff can apply for its insertion in the commercial list, or the defendant can apply for directions and ask for pleadings at any time after appearance. And, again, in the case of an action under order 14, after leave to defend has been given, the plaintiff can wait until the time for defence has expired, and if no defence is delivered take his judgment in default, or if defence is delivered can deliver his reply and take out a summons to have the action entered in the commercial list. Or, on the other hand, if on leave to defend being given the plaintiff obtains the insertion of the case in the special list under order 14 for summary trial, the defendant can apply to the judge of the commercial court for directions, including insertion of the case in the commercial list.

In commercial actions which are neither under order 18A nor by a specially-indorsed writ, the parties can proceed by the ordinary rules as to pleading and obtain the insertion of the case in the commercial list before trial, or either party can apply at any stage for such other and more expeditious disposal of the action as he may desire.

It will be seen that one effect of the Judges' Regulations will be to establish a second judge's list for chamber business, and on reference to the terms of the Judicature (Procedure) Act, 1894, it will also be seen that the terms of that Act as to appeals from chambers will apply to appeals from the judge of the commercial court. This is an important point, for had it been otherwise the checks imposed by that Act on interlocutory appeals would have been conspicuous by their absence in commercial causes. In some points of detail the application of the Act is perhaps obscure, but in the main it, no doubt, applies to appeals from the commercial judge.

Two other important provisions are applied to commercial causes. "Parties may, if they so desire, agree that the judgment or decision of such judge in any cause or matter shall be final" (Judges' Regulations, No. 9); and under regulation 6 the judge is empowered, on the application of either party or by consent, "to dispense with the technical rules of evidence for the avoidance of expense and delay which might arise from commissions to take evidence and otherwise." As to these two pro-

visions, we can only say that if they are found to work well in commercial causes they will have to be applied to all causes.

This, then, is the working plan which has been established for commercial causes, and the best answer we can give to the question with which we commenced this article is that the object of our judicial authorities in establishing a commercial court and providing a procedure suitable to the determination of commercial disputes has undoubtedly been to meet the obvious requirements of the commercial community. Commercial men are as free as heretofore to choose their own way of settling their disputes, but it was not consistent with the responsibilities attaching to the control of the national legal tribunals to allow defects of machinery to continue which operated on commercial men as a retarding influence to prevent them from bringing their cases into court, and induced them to set up tribunals of their own. And because it was not right that this should continue, those defects have—all but one—been removed.

We regret to have to say "all but one." So much has been done, and done with such a true appreciation of mercantile requirements, that it may seem presumptuous to say that the work is not yet complete. We have expedition, economy, and finality, but we still lack one element which, in our opinion, is essential to complete success. A commercial man will venture much on any issue in which he believes himself to be right. But to stand to lose in any event violates his most cherished ideas of the fitness of things. Until, therefore, the law and practice as to costs are so altered that success at law carries with it indemnity as to all costs reasonably incurred, his confidence will not, we believe, be wholly won. FRANCIS A. STRINGER.

JUDGMENTS BY CONSENT.

II.

Dismissal by consent.—In *Magnus* v. *National Bank of Scotland* (1888, 36 W. R. 602) it was decided by KAY, J., that where an action is by consent ordered to be dismissed for want of prosecution there is no bar to a second action, but he also said: "Now if that consent order had proceeded on a compromise of the cause of action it would have been an absolute bar to a new action. . . . It seems to me that where an order obtained on such a summons is expressed to be made by consent, the court may look behind the order and see upon what terms that consent was given, and whether there be any ground for saying that it was intended to compromise the action altogether" (and see *Re Orrell, &c., Co.*, 1879, 28 W. R. 145, 12 Ch. D. 681). But where an action is dismissed by consent, as part of an agreement to compromise, it constitutes a bar to a second action: *Parker* v. *Simpson* (1870, 18 W. R. 204).

Where an action is in fact compromised, the order dismissing the action cannot be set aside by consent, at any rate as a matter of course, and not at all where the effect would be to prejudice third parties (*The Bellcairn*, 1885, 34 W. R. 55, 10 P. D. 161), and such a consent order cannot be varied without mutual consent: *Australasian, &c.*, v. *Walter* (36 SOLICITORS' JOURNAL, 42, W. N., 1891, p. 170) (see *The Karo*, 1887, 13 P. D. 24). So a judgment by consent against one joint contractor will not be set aside by a similar consent, so as to let in as defendant another joint contractor, in whose favour the existing judgment was a bar: *Hammond* v. *Schofield* (1891, 1 Q. B. 453). But an agreement to "discontinue" proceedings is different from an agreement that an action should be dismissed, and leaves the parties at liberty to start fresh proceedings if they wish: *The Kronprinz, &c.* (1887, 35 W. R. 783, 12 App. Cas. 256).

There is one case, however, which occasions some difficulty—viz., *Jenkins* v. *Robertson* (1867, 1 H. L. (Sc.) 117). So far as material the facts were that a previous action had been brought for exactly the same cause, but by different plaintiffs, on behalf of the public, the claim being for a declaration of a public right of way. The pursuers obtained a victory in the court below; but, on a new trial being granted, they agreed to "judgment absolving the defenders from the whole conclusions of the action and decreeing against the pursuers for the amount of expenses agreed upon." In the second action the plea of *res judicata* was raised, but the House of Lords held that the former action was compromised, Lord CHELMSFORD, L.C., saying, "The interlocutor in the former action having been the result of a compromise between the parties, it cannot be considered as a *judicium*, nor can it be admitted as *res judicata*." The real ground of the decision appears to be that it was not the intention of the parties that the claim should be finally decided, even if the plaintiffs had power by consent to bind the public; that the agreement was, in fact, confined to the dismissal of the actual suit without any final decision being delivered on the merits, except as between the immediate parties on the record.

Assent of court.—This assent is given on the faith of the statement of counsel or attorney, without inquiry as to any knowledge of the client or authorization by him. "The business of the court cannot proceed unless credit is given to the statements of counsel that they have authority for what they do. They must themselves judge of the extent of their authority under the ordinary responsibilities": *Re Hobler* (1844, 8 Beav. 101). Again, "the court gives credit to counsel, and with great justice, for it knows that they act according to their instructions. It gives credit to the instructions given by the solicitors, knowing perfectly well that solicitors act with the most perfect *bona fides*, and never give instructions which they do not consider they are duly authorized to give. . . . Since I have been upon the bench I have always assumed that the client has been communicated with, and that what is proposed is done with his sanction and knowledge," *per* ROMILLY, M.R., in *Swinfen* v. *Swinfen* (1857, 6 W. R. 10, 24 Beav., at pp. 562, 564).

The remaining part of our subject is naturally divided into several heads, of which the two most important are: 1. The authority of counsel and solicitor; 2. The grounds of relief.

1. *Authority of counsel and solicitor.*—Counsel has general authority to act for the party he represents in the "conduct of the cause and all that is incidental to it": *Matthews* v. *Munster* (1887, 36 W. R. 178, 20 Q. B. D. 141 (C. A.)). So in the older case of *Bradish* v. *Gee* (1754, Amb. 229) it was held that a party is bound by the consent of his counsel, though given without direct authority; and in *Mole* v. *Smith* (1820, 1 J. & W., at p. 673) ELDON, L.C., said it was for counsel to consider whether he is authorized to give consent, and that, if given, it would bind his client: see, too, *Furnival* v. *Bogle* (1827, 4 Russ., at p. 146, *per* LYNDHURST, L.C.). The leading case now is *Matthews* v. *Munster* (1887, 36 W. R. 178, 20 Q. B. D. 141), where BRETT, M.R., said: "I apprehend that it is not contended that this power cannot be controlled by the court. It is clear that it can be, for the power is exercised in matters which are before the court, and carried on under its supervision. If, therefore, counsel were to conduct a cause in such a manner that an unjust advantage would be given to the other side, or to act under a mistake in such a way as to produce some injustice, the court has authority to overrule the action of the advocate." This last sentence explains the case of *Bodington* v. *Harris* (1823, 1 Bing. 187), where an attachment was set aside and a new trial ordered on an affidavit shewing that the consent had been given against the express directions of the defendant, and that there was *no reasonable cause of action*: *cf. Holt* v. *Jesse* (1876, 24 W. R. 879, 3 Ch. D., at pp. 182, 183). This general authority permits counsel to consent (*inter alia*) to the dismissal of a petition (*Re Hobler*, 1844, 8 Beav. 101); to undertake not to appeal (*West Devon Great Consols Mine*, 1888, 36 W. R. 342, 38 Ch. D. 51 (C. A.)), but in order to bind his client the undertaking must be embodied in the order (*Hull and County Bank*, 1879, 28 W. R. 125, 13 Ch. D. 261); to agree to the reduction of damages given by a jury (*Thomas* v. *Harris*, 1858, 27 L. J. Ex. 353); to consent to the withdrawal of a juror upon terms (*Straus* v. *Francis*, 1866, 14 W. R. 634, L. R. 1 Q. B. 379), or to a *stet processus* (*Rumsey* v. *King*, 1876, 33 L. T. N. S. 728 (C. A.)); to consent to a verdict against his client and the withdrawal of imputations (*Matthews* v. *Munster*, *ubi suprd*).

But counsel has no power to compromise matters which are not in issue, or are merely collateral to the matters in issue. On this point the case of *Swinfen* v. *Swinfen* (1858, 2 De G. & J. 381) is always referred to as a leading, though a puzzling, authority. In that case an issue had been directed out of Chancery, and was entered for trial at the Stafford Assizes. The plaintiff was the heir-at-law of a testator who

had devised the whole of his estates to his widow, the defendant, and the issue was *devisavit vel non*. When the case had already been part heard, Sir F. THESIGER, who led for the defendant, without the consent of his solicitor, and against the express instructions of the defendant, agreed that a juror should be withdrawn, and that the devisee should convey the whole estates, which were of great value, in consideration of an annuity of £700, in addition to another annuity of £300 which she already had. The defendant refused to perform the order of the court, and motions for attachment were twice refused at common law, in the second instance because CROWDER, J., differed from his colleagues, and held that a compromise is not within the ordinary authority of counsel: *Swinfen* v. *Swinfen* (1857, 1 C. B. N. S. 364, 18 C. B. 485). The heir-at-law then brought this supplemental bill for specific performance, which was refused in both the Rolls Court and the Court of Appeal. ROMILLY, M.R., gave a long judgment, much of which cannot be regarded as law. He repudiated the idea that a solicitor has any implied authority to compromise a suit, but said, "If a client be present in court, and stand by and see his solicitor enter into terms of an agreement, and makes no objection whatever to it, he is not at liberty afterwards to repudiate it." He held that the virtual sale of the widow's rights for an annuity of £700 was outside an attorney's authority, saying, "I have myself no doubt whatever, both on principle and authority, that the employment of an attorney does not entitle him to sell the subject-matter of the suit, either to a stranger or to the opposing party, without an authority for that purpose" (p. 563). When the case was before the Court of Appeal KNIGHT-BRUCE, L.J., said: "To barter her case for a life annuity of £700, or for any other substitute, however valuable, and on that footing, and for that purpose, to abandon the issue without a verdict, was not an act which, or the like of which, the client had ever instructed her attorney or counsel to do, or could have reasonably supposed to be likely or possible without her personal direction or personal concurrence, but was an act to which she had expressly refused to assent; nor, probably, can it be out of place for the present purpose to bear in mind that the point under trial was one deeply involving her feelings, and very seriously implicating her character for truth and upright dealing." He and TURNER, L.J., agreed that in any case specific performance could not be decreed, the latter saying (p. 394): "Assuming such agreements to be binding upon clients, I think that if the agreements are of such a nature that recourse must be had to this court, exercising its ordinary jurisdiction, for the purpose of enforcing them, this court must be guided by its ordinary rules and principles in determining whether it will enforce them or not. Attending to these rules and principles, I am of opinion that the agreement in question in this suit ought not to be specifically enforced." This case has constantly been quoted in judgments at common law, and always treated as deciding that the particular agreement was outside the authority of counsel, and it has also been suggested by the bench, though, it is submitted, erroneously, that an issue sent from Chancery must be tried out. The same case was followed recently in *Kempshall* v. *Holland*, where the Court of Appeal set aside a consent order in an action for damages for breach of promise of marriage, inasmuch as the consent given exceeded the authority of counsel in engaging the plaintiff (1) to return all letters received from the defendant, and (2) to undertake not to molest the defendant in the future.

Other cases on this point are *Ellender* v. *Wood* (1888, 32 SOLICITORS' JOURNAL, 628), where the Court of Appeal varied two items of a consent order as not being within the issues raised by the claim and counter-claim. But the general authority to compromise may involve the settlement of an action in another division, whether there is a fund in court set apart to abide the result of that action or not: *Hargrave* v. *Hargrave* (1850, 12 Beav., at p. 412), *Scully* v. *Dundonald* (1878, 27 W. R. 249, 8 Ch. D. 658 (C. A.)).

Contrary instructions.—What is the effect of a consent given by counsel or solicitor contrary to the express instructions of the litigant? This question must be further sub-divided: (*a*) as to its effect on the relationship with the opposing party, and (*b*) on its relationship between the client and his representatives.

(*a*) *The effect of consent order as regards the opposing party.*—It seems now to be clear that, unless there is some special ground of relief, mere dissent by the litigant, not communicated at the time to the other side, will not invalidate the compromise. It was settled that where a party was in court and did not dissent, he could not afterwards upset the compromise: *Swinfen* v. *Swinfen* (*ubi supra*), *Chambers* v. *Mason* (1858, 5 C. B. N. S. 59 (C. A.)). But the cases have gone further than this. Thus, in *Filmer* v. *Delber* (1811, 3 Taunt. 486, 12 R. R. 688) Lord MANSFIELD refused to set aside a reference on the mere ground that it was consented to against the instructions given to the attorney. In *Straus* v. *Francis* (1866, 14 W. R. 634, L. R. 1 Q. B. 379) there was a motion to set aside a compromise and for a new trial, counsel having agreed to the withdrawal of a juror upon terms against the wishes of the litigant, which, however, were not communicated to him until after the arrangement was concluded. All the judges (BLACKBURN, MELLOR, and SHEE, JJ.) agreed that this compromise was within the scope of counsel's authority, and was binding on the client, unless his objection was made known at the time to the other side. This was followed in *Rumsey* v. *King* (1876, 33 L. T. N. S. 728 (C. A.)), and applied to a *stet processus* agreed to by the plaintiff's counsel and attorney against the express instructions of their client. He subsequently protested; but the court held that he should have protested at once, and openly. Lastly, in *Matthews* v. *Munster* (1887, 36 W. R. 178, 20 Q. B. D. 141) Lord ESHER, M.R., said: "When the client has requested counsel to act as his advocate . . . he thereby represents to the other side that counsel is to act for him in the usual course, and he must be bound by that representation so long as it continues, so that a secret withdrawal of authority unknown to the other side would not affect the apparent authority of counsel. . . . Until his authority is withdrawn he has, with regard to all matters that properly relate to the conduct of the case, unlimited power to do that which is best for his client . . . If the client is in court, and desires that the case should go on, and counsel refuses, if after that he does not withdraw his authority to counsel to act for him, and acquaint the other side with this, he must be taken to have agreed to the course proposed." The Master of the Rolls and BOWEN, L.J., agreed that the relationship of client and counsel is not that of principal and agent in the ordinary sense of the term. The latter further said that it is the duty of counsel to consult his client with regard to important matters, and to return his brief if the client persists in instructions which he cannot submit to carry out.

Withdrawing consent.—JESSEL, M.R., said in *Craven* v. *Stanley* (1876, 20 SOLICITORS' JOURNAL, 542) that after judgment had been delivered, any concession made by counsel could be withdrawn before the order was passed, as the order itself could not be drawn up in that form without consent, but that this did not apply to concessions made in the course of pending litigation. And probably the same limitation should be put on his remarks in *Rogers* v. *Horn* (1878, 26 W. R. 432). But where consent has been given in the course of litigation by counsel in possession of all the facts which ought to influence his judgment, this consent cannot afterwards be withdrawn, although the order has not been drawn up: *Holt* v. *Jesse* (1876, 24 W. R. 879, 3 Ch. D. 177, *per* MALINS, V.C.); and in *Attorney-General* v. *Tomline* (1877, 26 W. R. 188, 7 Ch. D. 388) FRY, J., held that, whatever the court might do before an order is passed and entered, it will only subsequently set aside a consent order for the same reasons that it will set aside a contract. In 1880 the same judge held that a consent order cannot be withdrawn, even before it is passed and entered, on a mere allegation of inadvertence unsupported by evidence: *Davis* v. *Davis* (1880, 28 W. R. 345, 13 Ch. D. 861), see *Cookes* v. *Cookes* (W. N., 1866, p. 86). The last and most authoritative case on the point is *Harvey* v. *Croydon Union, &c.* (1884, 32 W. R. 389, 26 Ch. D. 249), where the defendants gave notice of the withdrawal of their consent on the ground of inadvertence, of which no evidence was given. The Court of Appeal held that consent given by the authority of counsel cannot be arbitrarily withdrawn, even before the order is passed and entered: *cf. Hargrave* v. *Hargrave* (1850, 12 Beav., at p. 413).

Acquiescence.—When the party is entitled to any relief he must be prompt in taking action, or his delay will be strong

evidence of acquiescence: *Ellender* v. *Wood* (1888, 32 SOLICITORS' JOURNAL, 628 (C. A.); but a short delay (here of three days) does not shew acquiescence: *Swinfen* v. *Swinfen* (1857, 3 De G. & J. 381).

REVIEWS.

SHERIFF LAW.

A COMPENDIUM OF SHERIFF LAW, ESPECIALLY IN RELATION TO WRITS OF EXECUTION. By PHILIP E. MATHER, Solicitor and Notary, formerly Under-Sheriff of Newcastle-upon-Tyne. Stevens & Sons (Limited); Sweet & Maxwell (Limited).

The author has very carefully and completely collected in this volume the law bearing on the duties of sheriffs and under-sheriffs. After a preliminary chapter on the appointment of the sheriff and his officers, the first half of the book is devoted to a description of the various writs and the mode of executing them. Prominence is naturally given to the writ of *fieri facias*, and the fifty pages in which it is dealt with shew that Mr. Mather is well qualified to state the law clearly and practically. The different points arising in the course of the execution of the writ are explained in their natural order, and, *inter alia*, a detailed list is given of goods which are and goods which are not seizable. Similar care is given to the writ of *elegit*, the writ of possession, and the other writs which the sheriff may be called upon to execute. A separate chapter is assigned to each, shewing the form of the writ, the practice relating to its issue, the manner of its execution, the return to the writ, and fees and other incidental matters. Chapters 19 to 25 deal with special subjects relating to execution, such as execution against companies, fixtures and execution thereon, and execution against the property of married women; and special care has been taken in the preparation of the chapter on bills of sale. The effect of the Bills of Sale Acts is accurately expounded, and very complete references are given to the numerous decisions upon them. Finally, Mr. Mather has chapters on interpleader, on the assessment of damages and compensation, on assizes and sessions, on criminal execution, and on the liability and rights of the sheriff and remedies against him. Under-sheriffs will find their duties at assizes and sessions very usefully stated in the chapter under that title. The above account indicates the extent of ground which Mr. Mather has covered, and we have no doubt that his book will be found very serviceable.

CASE LAW.

RULING CASES. ARRANGED, ANNOTATED, AND EDITED BY ROBERT CAMPBELL, M.A., of Lincoln's-inn, Barrister-at-Law. Assisted by other Members of the Bar. WITH AMERICAN NOTES BY IRVING BROWNE. Vol. II. Action—Amendment. Stevens & Sons (Limited).

The most important titles in the second volume of "Ruling Cases" are "Administration" and "Agency," and in regard to each the editor acknowledges the assistance he has had from Mr. A. E. Randall. "Administration" deals chiefly with the administration of the estates of intestates, and section I. opens with two important cases on the jurisdiction of the courts of a country other than the country of the deceased's domicil. *Enohin* v. *Wylie* is selected as the authority for the proposition that a grant of administration by the courts of the country of the domicil at the time of death ought to govern grants subsequently made by the courts of other countries; and *Preston* v. *Melville* for the proposition that, while the beneficial right of succession is regulated by the law of the country of domicil, the assets in any particular country must be administered, and the surplus ascertained, according to the *lex loci*. The two following sections deal with the persons entitled to administration, and with the making of temporary and limited grants. The later sections take a wider view of the subject, and contain cases relating both to executors and administrators. Section VI. deals with the rights and duties of executors and administrators "as to persons claiming under them," a phrase which is used, perhaps not very happily, to include both creditors and beneficiaries. It deals, *inter alia*, with the personal representative's right of retainer, for which the old authority of *Warner* v. *Wainsford* is cited as the leading case, and with the right of the executor to compel beneficiaries to refund in the event of existing liabilities ripening into debts (*Jervis* v. *Wolferstan*). Section VII. deals with the rights of creditors *inter se*, and section VIII. with the rights of beneficiaries *inter se*. The latter includes as a ruling case *David* v. *Frowd*, according to which one of the next of kin, who has been omitted on a distribution of assets under a decree in an administration action, may sue the rest for restitution. It is obvious that the selection of ruling cases to cover so wide a subject as administration must have been a task of great difficulty, and we are not sure that Mr. Campbell has not endeavoured to bring too much together under one head. It will be possible to cure the mistake, however, if it has been made, by cross-references in future volumes. The subject of agency lends itself more easily to systematic treatment, and twenty-six ruling cases are grouped in nine sections. But the two which are given at greatest length suggest again a question as to the editor's arrangement. *Ashbury Railway Carriage Co.* v. *Riché* is doubtless important with respect to the essentials of ratification, but it is still more important with respect to the effect of the memorandum of association on the legal capacity of a company, and probably its full statement should appear under a title dealing with companies. The criticism is justified by Mr. Campbell's notes, which are concerned solely with company law. Again, *Fowler* v. *Hollins* would be looked for under the head of "conversion" rather than of "agency," and the notes will be found to refer to *Consolidated Bank* v. *Curtis*, the most important recent case on conversion. No such objection, however, can be taken to the title "Ambiguity," which contains seven useful and well-selected cases on the construction of deeds. It is announced in the preface that an annual *Addendum* will be issued at the end of each year, containing, under the appropriate title and rule, notes of cases published since the issue of vol. I. This will increase the usefulness of a series which, as we have already intimated, promises to be of great service to the profession.

BOOKS RECEIVED.

Conveyancing and Settled Land Acts, and some other Recent Acts affecting Conveyancing. With Commentaries. By H. J. HOOD, M.A., one of the Bankruptcy Registrars of the High Court of Justice, and H. W. CHALLIS, M.A., Barrister-at-Law. Fourth Edition. By the Authors, assisted by H. A. COLMORE DUNN, B.A., Barrister-at-Law. Reeves & Turner.

Forms of Originating Summons and Proceedings Connected Therewith, Adapted to the New Rules. With Notes. By GEORGE NICHOLS MARCY, Barrister-at-Law, assisted by GILBERT MARSHALL PRIOR, B.A., LL.B. (Camb.), Barrister-at-Law. Horace Cox.

The Law of Compensation under the Lands Clauses Consolidation Acts; the Railway Clauses Consolidation Acts; the Public Health Act, 1875; the Housing of the Working Classes Act, 1890; the Metropolis Local Management Acts; and other Acts. With a Full Collection of Forms and Precedents. By EYRE LLOYD, Barrister-at-Law. Sixth Edition. By W. J. BROOKS, Barrister-at-Law. Stevens & Haynes.

Reports of State Trials. New Series. Vol. VI. 1842 to 1848. Published under the direction of the State Trials Committee. Edited by JOHN E. P. WALLIS, M.A., Barrister-at-Law. Eyre & Spottiswoode.

Handy Book on the Formation, Management, and Winding up of Joint-Stock Companies. By WILLIAM JORDAN, Registration and Parliamentary Agent, and F. GORE-BROWNE, M.A., Barrister-at-Law. Eighteenth Edition. Jordan & Sons.

Treatise on the Law relating to the Validity of Contracts in Restraint of Trade. By WILLIAM ARTHUR JOLLY, B.A. (Oxon.), Barrister-at-Law. Effingham Wilson.

The Solicitor's Clerk. A Handy Book upon the Ordinary Practical Work of a Solicitor's Office. With precise Instructions as to the Procedure in Conveyancing Matters and the Practice of the Courts. By CHARLES JONES, Managing Clerk to Messrs. Lewis & Russell, Solicitors, Cheltenham. Third and Revised Edition. Effingham Wilson.

CORRESPONDENCE.

SETTLEMENT ESTATE DUTY.

[*To the Editor of the Solicitors' Journal.*]

Sir,—You will doubtless remember our letter to you of the 5th of November last (*ante*, p. 25) as to the proper interpretation of the Finance Act, 1894, with regard to the payment of this duty upon residuary real and personal estate settled by will—*i.e.*, whether such duty should be calculated upon the gross or upon the net residue. As the point seemed to arouse some interest amongst your readers, and is also of practical importance, we now send an account of the conclusion of the matter.

It will be remembered that the Commissioners of Inland Revenue claimed that this duty should be paid on the gross value of the settled real and personal estate, stating that no deduction could be allowed for probate and executorship expenses, or for the estate duty.

What follows will be made clearer by our giving the actual figures involved. The personalty upon which estate duty was paid amounted to £12,084 1s. 8d.; and after deducting from this sum the value of and the legacy duties paid upon three small specific legacies given free of legacy duty (a total of £46 18s.), there remained a balance of £12,037 3s. 8d., upon which settlement estate duty was claimed.

The realty was valued at £5,995 for the payment thereon of estate duty, and the commissioners claimed settlement estate duty on the same amount. These duties were paid in accordance with such claims, but under protest.

As soon as the rules as to the mode of appealing under the Finance Act were published we prepared a statement of our clients' ground of appeal against the commissioners' claims, and served it upon them on the 1st inst.

With regard to the personal estate we claimed in such statement that the cost of probate (£525 7s. 2d.) and the executorship costs and expenses (£35 0s. 9d.) should have been deducted from the said sum of £12,037 3s. 8d., and that settlement estate duty should have been assessed upon the balance of £11,476 15s. 9d. only. The duty already paid was £120 8s. with £1 3s. 7d. for interest, so of the former sum we demanded the repayment of £5 12s. and of the latter 1s. 1d., a total of £5 13s. 1d.

With regard to the real estate we claimed that the estate duty thereon, and the costs of passing the account thereof (£243 6s.), and the costs of having the trustees admitted to the properties, which are of copyhold tenure (£14 8s. 11d.), should have been deducted from the said gross principal value of £5,995, and that settlement estate duty should have been assessed on the balance of £5,737 5s. 1d. only. The duty already paid was £60, and we therefore demanded the repayment of £2 12s.

On the 15th inst. our London agents received a letter from the commissioners stating that, upon the production of the stamped settlement estate duty account and the executors' receipt for £8 5s. 1d. (the exact amount in dispute), they would repay that sum. They had previously intimated that they considered our contention to be correct, and that the official practice was "subject to revision" at the time when they wrote the letter of which an extract is given in our letter to you. The commissioners certainly acted with promptness and courtesy upon receiving our statement of grounds of appeal.

The result of the above seems to be that, in future, settlement estate duty will be payable only upon the property which actually comes into the hands of the trustees of a settlement, and not, in addition, upon other duties and costs paid thereout or chargeable thereon.

Burnley, February 20. CREEKE & SON.

TIME FOR DEFENCE UNDER ORDER 14.

[*To the Editor of the Solicitors' Journal.*]

Sir,—There is a slight error in your article in last week's issue, "Time for Defence under Order 14." For the purpose of his argument the writer fixes the time *commonly* mentioned in the order at *ten* days. This is not so; the regular time inserted, according to practice, in such an order is a week unless otherwise ordered by the master. H. H.

[See "Current Topics."—ED. *S. J.*]

NEW ORDERS, &c.

COMPANIES (WINDING-UP) ACT, 1890.

The following Draft Rules are published pursuant to the Rules Publication Act. Copies may be obtained at the Board of Trade.

GENERAL RULES made pursuant to section 26 of the Companies (Winding-up) Act, 1890.

Time for holding First Meetings.

1. Rule 45 of the Companies Winding-up Rules, 1890 (providing that the First Meetings of creditors and contributories shall not be held until the Company's statement of affairs has been submitted) is hereby annulled.

Meetings of Creditors and Contributories.

2. Sub-section 2 of Rule 63 of the Companies Winding-up Rules, 1890, is hereby annulled, and instead thereof the following Rule, which may be cited as Rule 63 (2A), shall have effect:—

Upon the result of the meetings of creditors and contributories being reported to the Court, the Court may, if the meeting of creditors and the meeting of contributories have each passed the same resolutions, or if the resolutions passed at the two meetings are identical in effect, upon the application of the Official Receiver forthwith make the appointments necessary for giving effect to such resolutions. In any other case the Court shall, on application by the Official Receiver, fix a day for considering the resolutions and determinations of the meetings, deciding differences (if any), and making such appointments and orders as shall be necessary.

Commencement.

3. These Rules shall come into operation on the day of 1895, and shall apply to every winding up of a company under an Order of the Court made on or after the same day.

Citation.

4. These Rules may be cited as the Companies Winding-up Rules, 1895.

Dated the day of , 1895.

TRANSFER OF ACTIONS.

Actions transferred by order dated Feb. 19, 1895, placed in the order in which they are to be heard:—

Re Garbutt Bashforth v Garbutt
Garbutt v Bashforth
Re Campbell Bruce v Moore
Verner v Frere
Jenkins v Theophilus
Musgrave v Burdett
Capenhurst v Arton
Betjemann v Betjemann
Re Ashton Leveson v Barnard
Edison Bell Phonograph v Hough Corporation, ld
Watkins v Watkins
Gosnell v Aerated Bread Co, ld
Newton v Newton
School Board for Langton v Norcliffe
Yates v Lloyd
Cumings v Hardman
White v Hay
Beighton v Beighton
Ingram v Elliott
Re Silvester Midland Railway Co v Silvester
Cooper v Pringle
The Western and Brazilian Telegraph Co, ld v The Brazilian Submarine Telegraph Co, ld
Tremain v Tremain
Hastings, Trading, &c v Smith
Donaldson v Turner
Smith v Wheeler
Taylor v Denison
Wakefield v Flack
Ford v Hirons
Tuson v Harris
Re Gibson Tordoff v Gibson
The Froggatts Electric Lighting Co v Dickson
Crompton v Lester
Dunn v Dunn
Viney v Binstead
Bate v Moody
Hutchings v Williams
Slack v Slack
Earl of Carnarvon v Brunt, Bucknell, & Co
Same v Same
Smith v Magniac
Copeland v Bliss
Dyke v Allman
Kensington Co-operative Stores, ld v J Lyons & Co, ld
Whitwham v Westminster Coal, &c, Co, ld
Read v Mayor
Younger & Co, ld v Vickers
E Emerson, jun v Emerson
Same v Same
Thomas v Bomash
Thomas v Timothy
Re David, Jones v Morgan
Re Turnbull, Ivey v Hayman
Robson v Smith
Moehle's Barr Patente Gesellchaft, &c, v Caspers
Lees v Handsley
Tatam v Boyd
Farlow v Cooke, sen
Re Jones, Robinson v Jerdein
Grange v Bradley
Claydon v Soanes
Birmingham Vinegar Brewery Co, ld v Towschitz
Chipperfield v Carter, sen
Kidley v Stone
Webster v Walker
New California, ld, v California Milling and Mining Co, ld
Dearberg v Letchford
Bligh v Bawtree
Shame v Park
Re Kemp Welch Aldridge v Kemp Welch
Simpson v Mayor, Aldermen, &c, of the Borough of Godmanchester
Piper v Beach
Snook v Winter
Bulmer v Pickering
Beaumont v Hatton
Harris v Mapleson
Quihampton v Peruvian Corpn, ld
Burial Board for Parish of Putney v Balfour
Sheen v Diamond
Smith v Mashiter
Gibb v Smith
Midland Ry Co v Gribble
Cumberland Union Banking Co, ld v Sweetapple's United Paper Mills, ld
Soppit v Diplock
Bird v Parslow
Re Pike Brownrigg v Pike
Re Clark Brown v Clark
Cunliffe v Pearson
Norman v Thomas
Shoe Machinery Co, ld v Cutlan
Baker v Senior
Martin v Bergheim
London and Midland Bank v Turner
Goodall v Crossley
Stainer v Local Board for Biddulph
Coles v Hay
Partington v Hartlepool's Pulp and Paper Co, ld
North Metropolitan Tramway Co v London County Council
Clarson v Alldritt
Marks v Holloway
Re Eyre McAndrew v Norris
Kemp v Horton

CASES OF THE WEEK.

Court of Appeal.

HOOD BARRS *v.* CATHCART—No. 1, 18th February.

PRACTICE—SUMMONS AT CHAMBERS—POWER OF JUDGE TO REFER TO COURT—JUDICATURE ACT, 1894 (57 & 58 VICT. c. 16), s. 1, SUB-SECTION 4.

The plaintiff having applied at chambers for the appointment, by way of equitable execution, of a receiver of the rents of the defendant, who was a married woman, Day, J., referred the summons to the Court of Appeal, there having been conflicting decisions of this court on the question raised. The plaintiff, having found there was a difficulty as to the entering of the case, now applied for directions that the matter might be entered in the list as a referred original summons. The question arose as to whether the judge at chambers had power to refer the summons to the Court of Appeal. The question whether a judge at chambers has power, since the passing of the Judicature Act of 1894, to refer a summons to the

Divisional Court was raised in the case of *Roberts* v. *Plant*, which was heard before this court on the 4th of February. There an application on the part of the plaintiff for judgment under order 14 came before Lord Russell of Killowen, C.J., at chambers, and was by him referred to the Divisional Court. The Divisional Court having heard the summons and given the plaintiff leave to enter judgment, an appeal from their decision was brought to the Court of Appeal. A doubt having been expressed as to whether the Divisional Court had jurisdiction to entertain the summons, the judges proceeded to hear the appeal on its merits, but said that they would consult with the other members of the court as to the point of practice, and would express their opinion on some future occasion.

Lord ESHER, M.R., now said that the opinion of the Court of Appeal was that, since the Judicature Act of 1894, the power which the judge at chambers formerly had of referring summonses to the Divisional Court was gone, so far as regarded those cases in which, under that Act, the appeal lay direct from chambers to the Court of Appeal. They thought that the proper practice was for the judge at chambers in every such case either to make an order on the summons or to refuse to make any order, and then in either case an appeal could be brought to this court. In the present case the summons ought to be again taken before DAY, J., at chambers, with an expression of this opinion of the court. He could then give such judgment as he thought fit, even if it were only a formal one, and from that judgment an appeal could be brought.

[Reported by F. G. RUCKER, Barrister-at-Law.]

MORLEY *v.* **RENNOLDSON**—No. 2, 6th February.

WILL—CONSTRUCTION—RESTRAINT OF MARRIAGE—CONDITIONAL GIFT—GIFT OVER—VOID GIFT.

This was an appeal from a decision of Kekewich, J. William Rennoldson, by his will dated the 4th of November, 1834, gave and bequeathed his residuary personal estate to his trustees upon trust for his daughter, Margaret Rennoldson, on attaining twenty-one or marrying, for her separate use for life, and after her death in trust for all and every her child and children as therein mentioned, and in default of such issue upon trust for certain other persons. By a codicil, dated the 30th of October, 1836, the testator declared that, in consequence of the continued nervous debility of his said daughter Margaret, his will was that she should not at any time contract matrimony, and in case of the marriage or death of his said daughter there was a gift over of his residuary estate to the persons taking under the gift over in his will. Margaret Rennoldson survived her father, and in 1842 married Robert Linkson. Shortly afterwards a suit was instituted for the administration of the testator's estate, and Wigram, V.C., decided that the limitation over by the codicil, being in general restraint of marriage, was void as to the life interest of the daughter: see 2 Hare, 570. The question whether the interest in remainder bequeathed to the children of the daughter by the will was revoked by the codicil was expressly left open by the Vice-Chancellor. Mrs. Linkson died on the 10th of June, 1894, having had ten children by her marriage, of whom six were still living. The testator's residuary estate was represented by a sum of £4,561 4s. 6d. New Consols paid into court to the credit of the action. The persons entitled under the gift over petitioned for the payment out of such sum to them. Kekewich, J., decided that the sum in court must be paid out to the six surviving children in equal shares after payment of the costs of all parties. The petitioners appealed. It was urged for the appellants that the Vice-Chancellor intended them to have the property on marriage or death, whichever first happened. There was no suspension of the vesting of the gift between marriage and death: the gift vested in them on the marriage, and came into possession on the death. However bad the motive for the gift, the gift itself was good. No case existed in which a gift to A., afterwards taken away and given to B. on the marriage of C., was held to be bad. They referred to *Occleston* v. *Fullalove* (22 W. R. 305, L. R. 9 Ch. 147), *Ayerst* v. *Jenkins* (21 W. R. 878, L. R. 16 Eq. 275), *Bellairs* v. *Bellairs* (22 W. R. 942, L. R. 18 Eq. 510), and *Scott* v. *Tyler* (2 Dick. 712). For the respondents the argument was that "death" must mean without having been married: the testator excluded the idea of marriage altogether, having forbidden his daughter to marry. "Marriage or death" was not an alternative expression; his plain intention was that the gift should go over on her marriage. [They were stopped by the court.]

THE COURT (Lord HALSBURY and LINDLEY and A. L. SMITH, L.JJ.) dismissed the appeal.

Lord HALSBURY said that the question turned on a very narrow point of construction. If they were reading the codicil as an original and independent document the appellants' construction might be right. The testator tried to impose a condition that his daughter Margaret should not marry. The true construction was that, on her death or marriage, whichever should first happen, or on her death without issue, the property should go over; she had not died without issue, and a condition was imposed that it should vest elsewhere on her marriage. Such condition was illegal, and therefore the original gift to the children of Margaret must take effect.

LINDLEY, L.J., said that the testator's object was unmistakable. In case of Margaret's marriage or death the property was to go over; but it could not go over in the event which had happened—namely, the death of Margaret leaving lawful issue; therefore it could not go over at all. If the codicil could be read alone the appellants' construction would be right. He accepted the decision of the Vice-Chancellor and applied it to the will. The appeal must be dismissed.

A. L. SMITH, L.J., gave judgment to the same effect. Appeal dismissed with costs.—COUNSEL, *Haldane*, Q.C., and *Hadley*; *Renshaw*, Q.C. and *Barnard Lailey*. SOLICITORS, *A. W. Pearce*, for *Pearce & Keele*, Southampton; *Haynes & Claremont*.

[Reported by W. SHALLCROSS GODDARD, Barrister-at-Law.]

Re **ABDY, RABBETH** *v.* **DONALDSON**—No. 2, 20th February.

SEPARATION DEED—COVENANT TO PAY "DURING LIFE"—RECONCILIATION—VALIDITY OF DEED.

Appeal from a decision of North, J. Mrs. Rabbeth brought an action to administer the estate of the late Robert Jack Abdy, the testator, under the following circumstances. Mrs. Rabbeth and the testator had, previously to December, 1889, been living together as man and wife. On the 20th of December, 1889, they executed a separation deed, by which they mutually agreed to live apart, and the testator covenanted to pay to Mrs. Rabbeth during her life £366 per annum, at the rate of £30 10s. per month, so long as she did not molest him. Some time after the execution of the deed the parties again cohabited, and continued to live together until the testator's death. The plaintiff claimed to be admitted as a creditor of the estate of the deceased for the value of the annuity provided for her during her life by the separation deed. North, J., allowed the claim, on the ground that there was no analogy between a separation deed and an arrangement between parties not husband and wife. In his lordship's opinion the very last thing contemplated was that the parties would come together again, or that the annuity should cease. The residuary legatees under the testator's will appealed, and said that there was no case in the books of a man living with a woman not his wife and providing for her by a deed of separation. By analogy to the case of husband and wife living apart the deed ought to be void as soon as the parties to it came to live together again. They referred to *Bindley* v. *Mulloney* (17 W. R. 510, L. R. 7 Eq. 343), *Nicol* v. *Nicol* (34 W. R. 283, 31 Ch. D. 524), *Ex parte Naden, Re Wood* (22 W. R. 936, L. R. 9 Ch. 670). For the respondent the argument was that no proviso could be imported into the deed; if it were so it would be void. The deed expressly stated that the payment was to be during the lady's life, and the clear and only meaning must be given to those words.

THE COURT (Lord HALSBURY and LINDLEY and A. L. SMITH, L.JJ.) dismissed the appeal.

Lord HALSBURY said that the appeal must be dismissed. He could not accept the appellant's construction of the deed without doing violence to the ordinary rules of construction. The provision for maintenance was intended to be binding on both parties, and they both imagined it to be so. The covenant was to pay during the lady's life; and he must decline to put in a provision which was not there; even if it were there it would be void. Applying the ordinary rules of construction of words and sentences, his lordship could find nothing in this instrument to deprive the covenant of its operation if the parties again resumed cohabitation. There was nothing of the sort stated beyond the reasons for which the covenant was entered into. The analogy of separation deeds between husband and wife absolutely failed. The nature of such cases imported that the husband and wife had been living together, and that the wife was entitled to maintenance: the separate existence of the wife must be guaranteed by a provision made by the husband during the period of their separation. No such consideration here arose, and the appeal must be dismissed.

LINDLEY and A. L. SMITH, L.JJ., delivered judgment to the same effect. Appeal dismissed with costs.—COUNSEL, *Samuel Hall*, Q.C., and *Alexander Young*; *Swinfen Eady*, Q.C., and *Mitchell*. SOLICITORS, *Black & Moss*; *Nokes & Stammers*.

[Reported by W. SHALLCROSS GODDARD, Barrister-at-Law.]

TREGO *v.* **HUNT**—No. 2, 20th February.

PARTNERSHIP—GOODWILL THE PROPERTY OF ONE PARTNER—RIGHT OF CO-PARTNER TO INSPECT BOOKS AND MAKE LISTS OF CUSTOMERS—PARTNERSHIP ACT, 1890 (53 & 54 VICT. c. 29), s. 24 (9).

Appeal from a decision of Stirling, J. (reported *ante*, p. 263). The plaintiffs, Mrs. Trego and Smith, were in partnership with the defendant Hunt under articles of partnership which provided that the partnership should continue for the term of seven years from the 1st of January, 1889, and that the goodwill of the business should belong to the plaintiff Trego. The articles, also, amongst other usual clauses, provided that proper books of account should be kept by the partners, and proper entries from time to time made therein of all dealings and transactions in anywise relating to the partnership, and that the same should be kept at the counting-house for the time being of the said partnership, and that "each of them the said partners shall have full access to such books, writings, and documents, and be at liberty to inspect the same, and take copies thereof or extracts therefrom at all reasonable times." It having come to the knowledge of the plaintiffs that the defendant had recently been extracting from the partnership books a list of the names and addresses of the customers of the firm, the plaintiffs, on the 24th of December, 1894, issued the writ in the action, and served upon the defendant a notice of motion asking that the defendant might be restrained from making or causing to be made any copy or extract of or from the books of the partnership existing between the plaintiffs and defendant for any purpose other than the purposes of the business of the said partnership, and from otherwise committing any breach of the articles of the said partnership. At the hearing of the motion it was admitted on behalf of the defendant, for the purpose of the argument, that the defendant intended, in the event of the partnership coming to an end, to use the said list for the purpose of soliciting customers of the firm, he proposing to engage in business of a similar nature to that carried on by the firm. Stirling, J., held that, on the authority of *Pearson* v. *Pearson* (32 W. R. 1006, 27 Ch. D. 145), the

defendant was entitled to do what the plaintiffs sought to restrain him from doing. The plaintiffs appealed. For the plaintiffs it was urged that, though the books were the property of the firm, and consequently of every individual member of the firm, still the goodwill was expressly stated to belong to Mrs. Trego, and therefore the books could only be used for legitimate partnership purposes. There was an implied trust on her co-partners that they should not abuse the trust imposed upon them and use the books for purposes other than partnership purposes. They referred to *Lamb* v. *Evans* (41 W. R. 405; 1893, 1 Ch. 218), and said that *Pearson* v. *Pearson* (*ubi suprà*) did not govern this case. The defendant contended that, on the authority of *Pearson* v. *Pearson* (*ubi suprà*), he was entitled after the termination of the partnership to go to the customers of the old firm and solicit their custom; he might even set up a rival business next door to his late partner's business. He could also make copies of any entries in the books; the articles of partnership allowed it, as also did the Partnership Act, 1890, *s.* 24 (9).

THE COURT (Lord HALSBURY and LINDLEY and A. L. SMITH, L.JJ.) dismissed the appeal.

Lord HALSBURY said that the plaintiffs sought to restrain, not the user of the books—about which the 20th clause of the articles of partnership said nothing—but the knowledge acquired by the one partner, which was not to be used against the others when they became separated. It was said that he might make use of the knowledge stored up in his memory, but he must not write it down. Such a consideration was entirely alien to the whole question. As partners they were entitled to every piece of information given by the books, and it was said that even if by an effort of memory they could retain all such information, they should not assist their memory by making any copies or extracts from the books. If once you gave up the principle which was laid down in *Labouchere* v. *Dawson* (20 W. R. 309, L. R. 13 Eq. 322), and that clearly was no longer the law after the decision in *Pearson* v. *Pearson* (*ubi suprà*), after the conclusion of the partnership it became perfectly lawful for each partner to solicit every customer of the old firm, and it was hopeless to contend that during the partnership a partner could not use the books for a purpose which would be lawful after its conclusion.

LINDLEY, L.J., was of the same opinion. If the proposed use of the books would be an infringement of the rights of the parties, he could understand the application, but no such case could be made out since the decision in *Pearson* v. *Pearson* (*ubi supra*). The appeal must be dismissed with costs.

A. L. SMITH, L.J., was of the same opinion. If the user of the information was to the injury of the firm other considerations would arise, but they could not here, because *Pearson* v. *Pearson* (*ubi suprà*) said that it was lawful. Therefore, the judgment of Stirling, J., was correct. Appeal dismissed with costs.—COUNSEL, *Hastings*, Q.C., *Cozens-Hardy*, Q.C., and *O. L. Clare*; *Buckley*, Q.C., and *Geo. Henderson*. SOLICITORS, *Miller, Wiggins, & Co.*; *H. J. Mannings*.

[Reported by W. SHALLCROSS GODDARD, Barrister-at-Law.]

High Court—Chancery Division.

Re **FLOATING DOCK CO. OF ST. THOMAS (LIM.)**—Chitty, J., 12th January and 13th February.

COMPANY—REDUCTION OF CAPITAL—CONFIRMATION BY COURT—FIRST PREFERENCE, SECOND PREFERENCE, AND ORDINARY SHARES—PREFERENTIAL RIGHTS AS TO CAPITAL AS WELL AS DIVIDEND—TOTAL EXTINCTION OF SECOND PREFERENCE AND ORDINARY SHARES—COMPANIES ACT, 1867 (30 & 31 VICT. c. 131), *s.* 11—COMPANIES ACT, 1877 (40 & 41 VICT. c. 26), *ss.* 3, 4.

Petition to confirm a special resolution for reduction of capital. The capital of the above company consisted of £163,618, divided into 46,748 fully-paid shares of £3 10*s.* each, of which 20,284 were first preference shares, 20,521 second preference shares, and 5,943 ordinary shares. By article 100 the profits (after setting apart such sums for repairs and renewals as the directors should, from time to time, consider necessary or proper) were to be divided as follows, and in the following order: (1) a £6 per cent. dividend contingent on each year's profits to the first preference shareholders; (2) a £5 per cent. dividend contingent on each year's profits to the second preference shareholders; (3) £4 per cent. of the whole net profits between specified persons; (4) ultimate surplus to ordinary shareholders. Article 115 provided that, if the company should be wound up, the assets of the company, so far as the same should extend, should be divided amongst the first preference shareholders, and if any surplus should remain after payment to them of the nominal amount of their shares, the same should be divided among the second preference shareholders, and only the ultimate surplus (if any) after paying them the nominal amount of their shares should be divided among the ordinary shareholders. Owing to losses and depreciation and decrease of trade due to alterations in the steamer routes the present value of the total capital had been reduced to £50,710, about £112,000 being lost or unrepresented by available assets. The company duly passed and confirmed a special resolution to reduce the capital to £50,710 by cancelling the ordinary and second preference shares and reducing the first preference shares to £2 10*s.* each. The proposed reduction was opposed by the holders of 431 second preference shares. The interest required for the first preference shares amounted to £4,259 12*s.* 9½*d.*, and the company's income had, since its reconstruction by the court in 1878, only once exceeded that amount—viz., in 1882, when the income was £4,283. The evidence shewed that there was practically no prospect of the company earning more than the first preference interest. It was estimated that the dock would last another seventeen years. Counsel for the company contended that under the circumstances the dock entirely belonged, capital and income, to the first preference shareholders, and that the proposed reduction was right. They cited *British and American Trustee and Finance Corporation* v. *Couper* (42 W. R. 652; 1894, A. C. 399), *Re Denver Hotel Co.* (41 W. R. 339; 1893, 1 Ch. 495), *Re Quebrada Railway Co.* (40 Ch. D. 363, 37 W. R. Dig. 34), *Re Gatling Gun (Limited)* (38 W. R. 317, 43 Ch. D. 628), *Re American Pastoral Co.* (34 SOLICITORS' JOURNAL, 320; W. N., 1890, p. 62), *Re Agricultural Hotel Co.* (39 W. R. 218; 1891, 1 Ch. 396), and *Re Barrow Hæmatite Co.* (37 W. R. 249, 39 Ch. D. 582). Counsel for the respondents admitted the jurisdiction of the court to make the order, but contended that, in the absence of evidence that the nominal capital had ever been represented by available assets, it was unfair to make the order. If the capital had been over-estimated from the first, the reduction should be rateable on all shares alike. Again, the first preference dividend being non-cumulative, there was always a chance of a dividend for the second preference shareholders, and that chance ought to preserve them from total extinction so long as the company was kept going. The directors ought to have kept the dock in repair (article 100). If the reduction was right now, why was it not right on the company's reconstruction by the court in 1878?

CHITTY, J., said that after the decision of the House of Lords in *British and American Trustee and Finance Corporation* v. *Couper* there could be no objection to the court's jurisdiction to make the proposed order. The court would protect the interests of dissentient shareholders. It was unnecessary to refer to the Acts. The evidence shewed that a large part of the capital had ceased to be represented by available assets. It ought, therefore, to be written off. In his lordship's opinion the company had proved the allegations of their losses. It was questioned whether the capital had ever been really represented, and it was urged that if the proposed reduction were right now, it would have been right in 1878. There was much to be said for that view, but at that time reasonable expectations were held as to the future prosperity of the dock. These expectations had not been realized. Again, it was said that the directors ought to have properly maintained the dock, but the 100th article went only to repairs, and not to reconstruction. It was not a case of reduction at the expense of deferred shareholders where there was only a preference as to dividend. Here, by article 115, the preference was as to capital also. Where there was a loss of capital, such loss should be thrown on those shareholders on whom the constitution of the company cast it. The case was, however, one for careful consideration, and his lordship had been much assisted by the respondents' argument. While confirming the proposed scheme of reduction, he allowed the respondents their costs.—COUNSEL, *Byrne*, Q.C., and *Cator*; *R. J. Parker*. SOLICITORS, *Radcliffe, Cator, & Hood*; *Field, Roscoe, & Co.*, for *Smith, Pinsent, & Co.*, Birmingham.

[Reported by G. ROWLAND ALSTON, Barrister-at-Law.]

HOLLINGTON *v.* **DEAR**—Chitty, J., 15th February.

PRACTICE—MARRIED WOMAN—RESTRAINT ON ANTICIPATION—EXISTING ACTION—UNSUCCESSFUL APPLICATION—COSTS—"PROCEEDING INSTITUTED"—MARRIED WOMEN'S PROPERTY ACT, 1893 (56 & 57 VICT. c. 63), *s.* 2.

This was an action to ascertain the persons entitled to a fund in the hands of Robert Heath, representing the balance remaining after the satisfaction of certain mortgages created by the defendant William Dear, now a bankrupt. It was established or admitted at the trial that Dear's trustees in bankruptcy were entitled to this balance. The judgment, dated the 8th of March, 1892, directed an account of the moneys received by Heath as mortgagee, Heath and the trustees in bankruptcy being the only persons directed to attend on the taking of the account. The result of the account having been certified on the 28th of May, 1894, and the balance transferred into court on the 28th of June following, the defendants, William Dear and his wife, presented a petition in person to have the account retaken. The petition being dismissed with costs, the respondents asked for an order under the Married Women's Property Act, 1893, *s.* 2, that the costs might be paid out of Mrs. Dear's property, which was subject to restraint on anticipation.

CHITTY, J., refused the application, saying that though the petition was misconceived and wholly vexatious it could not be said that a petition presented in an action by a married woman defendant was a "proceeding instituted" within the meaning of the section. Such a petition stood on the same footing as a motion in an action, and the decision in *Hood Barrs* v. *Cathcart* (38 SOLICITORS' JOURNAL, 661; 1894, 3 Ch. 376) applied. The order asked for could not be made.—COUNSEL, *W. Baker*; *F. Cooper Willis*; and *A. J. Allen*. SOLICITORS, *Bassett & Co.*; *Fraser & Christian*; *Fenley*; *Allen & Son*.

[Reported by G. ROWLAND ALSTON, Barrister-at-Law.]

Re **HORLOCK, CALHAM** *v.* **SMITH**—Stirling, J., 15th January and 14th February.

WILL—LEGACY TO CREDITOR OF TESTATOR UNDER A DEED OF COVENANT—IMMORAL CONSIDERATION—SATISFACTION.

By an indenture or deed of covenant dated the 3rd of July, 1891, and made between the above-named testator, Frederick Geldart Webb Horlock, of the one part, and the plaintiff, Ann Calham, of the other part, after reciting that the testator was indebted to the plaintiff in the sum of £300, the testator covenanted with the plaintiff, her executors and administrators, that the testator's executors and administrators would, within three calendar months next after his decease, pay to the plaintiff, her executors and administrators, the sum of £300, and the plaintiff on her part,

for herself, her executors and administrators, covenanted not to demand or sue for payment of the said sum of £300 until after the expiration of three calendar months from the death of the testator. The testator made his will on the 31st of July, 1891, and by a codicil thereto, dated the 14th of October, 1891, he bequeathed to the plaintiff a legacy of £400. The testator died in 1892, and the executors of the will paid the legacy of £400 to the plaintiff, but refused to pay the £300 alleged by the plaintiff to be due under the deed of covenant aforesaid, on the ground that the consideration therefor was immoral, and that in any event the alleged debt of £300 was satisfied by the legacy of £400 bequeathed to the plaintiff as aforesaid. This was an originating summons taken out by the plaintiff to have it determined whether or not the said debt of £300 was satisfied by the legacy of £400, and whether or not the said sum of £300 with interest thereon was due to the plaintiff. The executors of the will of the testator were abroad, and they had appointed the defendant their attorney, who was now sued as administrator with the will annexed of the testator. It was admitted by the plaintiff that previous to the date of the execution of the deed of covenant immoral relations had subsisted between the testator and the plaintiff, but the latter in her evidence swore that they had ceased previous to such date and were never resumed. The testator continued to make the plaintiff an allowance of 30s. a week up to the time of his death. The rest of the facts sufficiently appear from the judgment of

STIRLING, J., which was delivered on the 14th of February as follows:—There are two defences raised against the plaintiff's claim—(1) that the consideration for the deed of covenant is immoral, and (2) that in any case the debt has been satisfied by the legacy of £400 bequeathed by the testator to the plaintiff. Now with respect to the first defence. On the face of it the deed is executed in consideration of a debt due from the testator to the plaintiff, but it is admitted that there never was any such debt, hence it is a voluntary deed, and as the testator's estate is more than sufficient to pay all the creditors, the plaintiff would be entitled to the £300 if the deed is a good one. Now, if the consideration for the deed was immoral, it obviously cannot be a binding instrument, but the burden of proof upon this point lies with the executors, who raise it. They say that the relationship between the testator and the plaintiff continued immoral up to the death of the testator. The plaintiff denies this, and alleges that the testator's health did not permit him to continue the cohabitation which she admits subsisted previous to the execution of the deed. This statement is unsupported, and is therefore unreliable. Consequently I assume that the relationship between them continued to be immoral. The executors also say that the deed was given in exchange for an informal document whereby the testator promised that the plaintiff should receive £300 from his executors if she continued to live with him up to his death, and that the consideration for that promise was clearly immoral. The real question is, however, Was the consideration in the deed itself immoral? It is plain that the testator as an honourable man would feel himself bound to make provision for the plaintiff, and I think it is plain from his letters that he in fact did consider himself so bound. Now I think that the court ought not to hastily assume consideration to be immoral, and consequently I am of opinion that this deed is a voluntary deed and a good deed, and that the plaintiff is entitled to the sum of £300. Now as to the second defence, *i.e.*, that the debt is satisfied by the legacy of £400 bequeathed by the testator to the plaintiff. The general rule is that where a testator gives to a creditor a legacy equal to or greater than the debt, the legacy is a satisfaction of the debt. This rule was established in the last century, but no sooner was it established than the judges sought to avoid it. Lord Hardwicke especially set himself against the rule, and in *Nicholls* v. *Judson* (2 Atk. 300) and *Clarke* v. *Sewell* (3 Atk. 96) he held that legacies respectively given therein were not satisfactions of debts due from the testators to the legatees on the ground that the legacies were not payable immediately on the death of the testator. Again, in *Haynes* v. *Mico* (1 Br. Ch. Cas. 129) Lord Thurlow followed Lord Hardwicke, and held that where there was a difference in any circumstance between a legacy and the debt, the legacy should not be deemed a satisfaction. The earlier cases were reviewed by Alexander, L.C.B., in *Adams* v. *Lavender* (M'Cleland & Younge, 41), and he came to the conclusion that *Haynes* v. *Mico* (*supra*) was good law. In *Atkinson* v. *Littlewood* (18 Eq. 595) Malins, V.C., felt himself compelled to apply the general rule of law, but the case is not in point. Next, in *Dowse* v. *Glass* (50 L. J. Ch. 285), where a testator had covenanted to pay an annuity of £10 to H. D. "so long as she should continue the widow of J. D." by equal half-yearly payments, and subsequently, by his will, bequeathed to her "an annuity of £30, if she should so long continue a widow," Hall, V.C., held that the circumstance that the latter annuity would not become payable until a year after the testator's death, whilst the former was payable half-yearly, rebutted the presumption of satisfaction. In the present case the debt due under the bond is payable three months and the legacy not until a year after the testator's death. I have to say whether, under these circumstances, the legacy is a satisfaction of the debt. I join many judges in disapproving of the general rule which has been laid down. I equally disapprove of many of the exceptions which have been taken, but both are binding upon me, and I must take the law as I find it, and finding that Hall, V.C., applied the rule of *Haynes* v. *Mico* in a case very similarly circumstanced to the present one, I think I ought to follow him. The parol evidence given in the case is of a doubtful character, but I think on the whole it is in the plaintiff's favour, and ought not to affect the decision, and, therefore, upon these grounds I hold that the plaintiff is entitled to the payment of the debt and interest thereon from three months after the testator's death.—COUNSEL, *Graham Hastings*, Q.C., and *Dickinson*; *Grosvenor Woods*, Q.C., and *Herman Robinson*. SOLICITORS, *Dobell*; *Hubert Smith*.

[Reported by ARTHUR MORTON, Barrister-at-Law.]

Re **WILLIAMS, WILLIAMS** *v.* **WILLIAMS**—Stirling, J., 13th and 20th February.

WILL—ANNUITY—PAYABLE SIX MONTHS AFTER TESTATOR'S DEATH—CHARGE ON REVERSIONARY INTEREST.

By his will, dated the 22nd of January, 1887, the above-named testator bequeathed all his personal property to his wife absolutely. His real property he gave to his wife during her life or widowhood, with remainder as to one part thereof to his son Harvey charged with the payment of an annuity of £30 to his daughter Sarah, and as to the other part to his son Alfred in fee simple. The residue of his real estate, if any, he gave to his son Harvey, and he directed that the annuity to his daughter Sarah should be paid half-yearly, the first payment to become due and to be paid at the expiration of six months from his (the testator's) death. The testator appointed his wife sole executrix of his will. This was an originating summons taken out by the testator's daughter Sarah, to have her rights under the gift of the annuity to her in the above will decided.

STIRLING, J., delivered judgment on the 20th of February. After reading the will as above, his lordship continued:—The question for me to decide is whether the annuity to testator's daughter Sarah runs from the death of testator, and, if so, whether it is payable during the wife's life of widowhood out of the reversionary devise to his son Harvey. According to the natural meaning of the language of the will it seems to me that the charge operates only on the reversionary interest devised to Harvey. The testator gives all his property to his wife, then after her death he gives certain real estate to Harvey and charges it with payment of the annuity to Sarah. The direction at the end of the will that the annuity is to run from six months after testator's death does not affect the charge created by the previous devise. The testator's meaning simply is that the reversion is charged with the annuity from the testator's widow's death or remarriage, when the reversion comes into possession. Now it is said that there are authorities which are against this contruction. The first of them is *Jackson* v. *Hamilton* (Ir. 9 Eq. Rep. 431). This is a case decided by Lord St. Leonards, and though not binding upon me is nevertheless very weighty. [His lordship read the headnote, stated the facts, and read the judgment, beginning with the words "The short question which I reserved," down to "exception to it must be overruled."] I concur with every word of that judgment, and I would adopt them here if they were applicable. I cannot, however, under the peculiar circumstances of that case, consider it an authority for holding that an annuity, charged on a reversion, is also charged on the life interest, as the plaintiff has urged in this case. The other case is that of *Bywater* v. *Clark* (18 Ch. D. 17). [His lordship stated the facts, and proceeded:—] Now, in this case there is an apparent inconsistency, and consequently it was held that the direction that payment of the annuity was to commence immediately after the death of the testator did not enlarge the gift, and must, therefore, be rejected. In the present will there is no inconsistency. It seems to me that if I am bound to follow any case it is *Jackson* v. *Hamilton*, which closely resembles the present one, and therefore I hold that this annuity commences at the death of the testator, but is only charged upon the reversion after the death of the widow.—COUNSEL, *E. B. Cooper*; *E. C. Macnaghten*; *Kenyon Parker*. SOLICITORS, *Collyer & Davis*, for *Benjamin Smith*, Birmingham; *Thomas White & Sons*.

[Reported by ARTHUR MORTON, Barrister-at-Law.]

Winding-up Cases.

BRODERIP *v.* **A. SALOMON & CO. (LIM.)**—Vaughan Williams, J., 14th February.

COMPANY—SALE OF BUSINESS TO "PRIVATE" COMPANY—PRINCIPAL AND AGENT—INDEMNITY—ISSUE OF DEBENTURES—13 ELIZ. C. 5, S. 2.

This was a debenture-holder's action. The company was formed in 1892 for the purpose of purchasing the business previously carried on by A. Salomon. The company put in a defence and counter-claim, whereby they alleged that the debentures were invalid as having been made to secure a loan to A. Salomon without consideration, and that the plaintiff was affected with constructive notice of certain arrangements between Salomon and his family and the company. These arrangements had reference to the formation and objects of the company. His lordship considered that the company was a "private" company, all the shareholders of which were not only members of A. Salomon's family, but were his nominees, and that no real interest was ever given to them in the company, nor was it ever intended to give them any real interest; that Salomon took the whole of the profits, and that his intention was to take the profits without running the risk of the debts and expenses, and that the company was a mere nominee of Salomon's. The company was ordered to be wound up by the court in 1893, shortly after the action had been commenced.

VAUGHAN WILLIAMS, J., in giving judgment on the 20th of November, said that he was quite certain that each one of the shareholders in the company was perfectly well aware of all that was done with regard to the purchase of Salomon's business by the company. The shareholders were all of full age, and the number of shareholders, as it existed at first, continued throughout the life of the company down to the liquidation. There never was any intention of offering the shares in the company to the public. It was what the late Master of the Rolls in *Re The British Seamless Paper Box Co.* (29 W. R. 690, 17 Ch. D. 467) called a "private" company, but on the other hand he was quite convinced that the shareholders, who were all members of Salomon's family, were his nominees, and that no real interest was ever given to them in the company, and he did not

believe that it was ever intended to give them any real interest in the company whatsoever. Now, in these circumstances, the legal position seemed to him to be this. He did not think that where there was a "private" company, and all the shareholders were perfectly cognizant of the conditions under which the company was formed, and the condition of the purchase by the company, it could possibly be said that purchasing at an exorbitant price (and he had no doubt whatever that the purchase here was at an exorbitant price) was a fraud on those shareholders or a fraud on the company. Of course purchasing at an exorbitant price might be a fraud, even if all the shareholders knew of it, if there was an intention to allot further shares at a later period to future allottees. But that was not the case here. But although that was so, it seemed to him that when one considered the fact that these shareholders were mere nominees of Salomon's, that Salomon took the whole of the profits, and that his intention was to take the profits without running the risk of the debts and expenses, the natural consequence had followed from that that there were some £11,000 unsecured creditors. The company was a mere nominee of Salomon's, and it did not seem that it ought to make the slightest difference whether the nominee was a company or an individual—a person; and, therefore, he wished to deal with the case exactly on the basis that he should do if the nominee, instead of being a company, had been some servant or agent of Salomon's to whom he had purported to sell the business. In these circumstances it seemed to him that the suggestion with regard to the statute of 13 Eliz. c. 5 could not be applied. If the liquidator here were a liquidator under the bankruptcy of Salomon he should have no hesitation, at the instance of the trustee in Salomon's bankruptcy, in making the necessary declaration to bring this property and the assets of this company, notwithstanding the debentures which were issued, into the general estate of Salomon in bankruptcy. But this was not the case of the bankruptcy of Salomon. Salomon was solvent. The liquidator was a liquidator under the winding up of the company. It seemed to him that in that winding up *qud* winding up he had no jurisdiction to make any order against Salomon, but this matter did not come before him in the liquidation. It was an action which was brought by the trustee of the agent company in liquidation. In these circumstances, if the agent had been an individual and not the company, what would have been the rights of the trustee in the bankruptcy of the agent? His right would have been this. He would have had a right, notwithstanding the form of the agreement between the principal and agent, treating them as strangers contracting, to make Salomon indemnify the agent against the debts that he had contracted by the direction of the principal, and so far as he could judge now (the matter had not been argued) the right of the liquidator in the liquidation was precisely the same, notwithstanding the debentures, which were a mere form, intended to give an appearance of reality to a sale which in fact was no sale at all, because it was a sale by a man to an agent for his own profit. In spite of that it seemed to him that the liquidator was entitled, as an asset of the company, to make Salomon indemnify the company against the debts which had been contracted at his bidding and for his benefit. Generally speaking, an agent in such circumstances would have a lien on the assets of the company, at least that was his view at present, without having the matter argued. But that which he had suggested as being the remedy of the liquidator was not the remedy he had asked for on the pleadings.

The pleadings were amended, and on the case coming on again on the 14th of February,

VAUGHAN WILLIAMS, J., said that to allow a man who carried on business under the name of a company to set up a debenture in priority to the claims of the creditors of the company would have the effect of defeating and delaying his creditors. There must be an implied indemnity of the company by him. The business was Salomon's business, and no one else's. He had chosen to employ as agent a limited company, and he was bound to indemnify that agent, and the agent had a lien on the assets which overrode his claims. The creditors of the company could have sued Salomon. As long as the pleadings were unamended the Statute of Elizabeth did not apply, because the creditors said to be defeated were the creditors of the company, but when they were amended, and alleged and succeeded in proving the identity of Salomon with the company, the creditors of the company thereupon became creditors of Salomon. The creditors of the company were defeated and delayed by the debentures. There would be judgment for the company in the action, and on the counter-claim asking for an indemnity and a declaration of a lien.—COUNSEL, *Kenyon Parker; Farwell*, Q.C., and *Theobald; McCall*, Q.C., and *Muir Mackenzie*. SOLICITORS, *Rowcliffes, Rawle, & Co.; S. M. & J. B. Benson; B. Raphael*.

[Reported by V. DE S. FOWKE, Barrister-at-Law.]

High Court—Queen's Bench Division.

NORTON *v.* **MONCKTON**—16th February.

COMMITTAL WARRANT—CIVIL DEBT—WRONGFUL ARREST—MONEY PAID TO OBTAIN RELEASE—COSTS—43 ELIZ. C. 2, S. 4.

This was a special case stated by an arbitrator for the opinion of the Divisional Court, of which the following are the material statements:—The plaintiff, William South Norton, who practises as a solicitor under the style of "Norton & Son," was summoned by the Malling Rural Sanitary Authority to abate a nuisance arising from the defective drainage of five cottages at East Malling, of which Messrs. Norton & Son were the owners within the meaning of the Public Health Act, 1875. The defendant is one of the justices of the peace for the county of Kent, and signed and issued the committal warrant against the plaintiff for the sum of £49 6s. 10d., which sum was alleged to be due under an order made against him at quarter sessions. On the 11th of December, 1893, the plaintiff appeared before the justices sitting in petty sessions at West Malling, who made an order against him for the amount claimed by the local board, and costs. From this order he appealed, and entered in due time into a recognizance, conditioned to appear and have the appeal tried at the next quarter sessions and to abide the judgment of that court, and to pay such costs as might be awarded. Owing to a technical defect the recognizance was invalid. When the case came on at quarter sessions on the 4th of January, 1894, a preliminary objection was taken by the counsel who argued the case for the local board, on the ground that the necessary recognizance had not been entered into. The plaintiff's counsel thereupon undertook that a fresh recognizance should be entered, and gave a surety, and the appeal was then heard on its merits, and was dismissed with costs. The plaintiff has, however, never entered into any fresh recognizance. On the 8th of February the costs, directed by the order of quarter sessions to be paid by the plaintiff to the local authority, were taxed at the sum of £45 5s. 10d. To this sum was added the taxed costs of the appeal, bringing the total amount up to £49 6s. 10d. The plaintiff was present when the amount of the claim and the costs were taxed, but has never paid them. The sanitary authority subsequently obtained a distress warrant, and it was then found that the plaintiff had no goods to satisfy the distraint. On the 23rd of April, 1894, the defendant, without jurisdiction (as is admitted), signed and issued a committal warrant, under which the plaintiff was arrested and lodged in Maidstone Prison, and, in order to obtain his release, he paid to the governor of the prison, under protest, the sum of £49 6s. 10d., being the sum set out in the margin of the warrant. The plaintiff was then released and the money paid to the local authority, who had, however, never authorized the governor of the prison to receive the same for them. It was contended before the arbitrator for the plaintiff that he was entitled to recover in this action the sum of £49 6s. 10d., by way of special damage or otherwise, on the ground, *inter alia*, that the plaintiff, being wrongfully arrested, had paid that amount to the governor under duress, whether or not he was bound to pay the local authority their costs. For the defendant it was contended that the plaintiff was not entitled to recover such sum by way of special damage or otherwise against him (*a*) because the plaintiff was legally bound to pay the whole amount under a valid order of quarter sessions; (*b*) that to decide otherwise would in effect reverse the order of quarter sessions. The question upon which the arbitrator desired to ask the opinion of the court was whether, under the circumstances, he ought to award to the plaintiff, by way of special damage or otherwise, the sum of £49 6s. 10d., or any, and what, part thereof. On this point counsel for the plaintiff submitted that his client was entitled to recover the sum of £49 6s. 10d. by way of special damage, which he was compelled to pay in order to obtain his release. Section 4 of 43 Eliz. c. 2 did not extend to costs, and the warrant was bad. It was therefore immaterial whether the money was legally due to the local board or not. The present case was identical with that of *Clark* v. *Woods* (17 L. J. M. C. 189). He referred to *Pitt* v. *Combes* (2 A. & E. 456, cited also in a note to *Marriott* v. *Hampton* in Smith's Leading Cases), and to the judgment of Lord Denman in *Sowell* v. *Champion* (6 A. & E. 411). The fact that the money had been paid to a third party made no difference. [He was stopped.] For the defendant counsel submitted that the arbitrator was right in not admitting that this claim was properly made out. It was an action by a solicitor, who was as such an officer of that court, and, therefore, the court had special jurisdiction, and he claimed, moreover, £1,000 damages for injury to his character and reputation. When the matter was heard at quarter sessions there was an objection taken to the appeal being heard, and the appeal was only heard on the undertaking of Mr. Norton's counsel that the plaintiff would enter into a fresh recognizance. Mr. Norton had been willing enough to take advantage of his own default so long as it suited him to do so, for he had always said he was not liable for these costs because he had not entered into any recognizance. Now he set up the Statute of Elizabeth as to costs as a ground for claiming the amount he paid back again from the defendant personally by way of special damage. He submitted that the plaintiff was liable to pay the costs, and could not recover, on the ground that he had undertaken to abide by the judgment of the court of quarter sessions and to pay such costs as might be awarded. *Clark* v. *Woods* could therefore be distinguished from the present case.

THE COURT (WILLS and WRIGHT, JJ.) gave judgment for the plaintiff. The committal warrant was without jurisdiction, and therefore the plaintiff was entitled to recover money he had paid to obtain his release from prison. They were bound by the decision in *Clark* v. *Woods*, and must direct that the arbitrator should award the plaintiff the sum of £49 6s. 10d. as claimed by way of special damage.—COUNSEL, *Macaskie; W. C. Fooks*. SOLICITORS, *W. A. E. Headley; Long & Gardiner*.

[Reported by ERSKINE REID, Barrister-at-Law.]

ATTENBOROUGH *v.* **HENSCHELL**—13th February.

COUNTY COURT — JURISDICTION — STAY OF EXECUTION — JUDGMENT OVER £20—COUNTY COURTS ACT, 1888 (51 & 52 VICT. C. 43), S. 105, 153.

This was an appeal from the decision of his Honour Judge Lumley Smith in the Westminster County Court, and it involved a question as to the extent of the judge's jurisdiction to grant a stay of execution. Section 105 of the County Courts Act, 1888, provides that "where judgment has been obtained for a sum not exceeding twenty pounds, exclusive of costs, the court may order such sum and the costs to be paid at such time or times, and by such instalments, if any, as it shall think fit, and all such

moneys shall be paid into court; but in all other cases the full amount for which judgment has been obtained shall be ordered to be paid either forthwith or within fourteen clear days from the date of the judgment, unless the plaintiff, or his counsel, solicitor, or agent, will consent that the same shall be paid by instalments," and section 153 provides that "if it shall at any time appear to the satisfaction of the judge that the defendant in any action or matter is unable, from sickness or other sufficient cause, to pay and discharge the debt or damages recovered against him, or any instalment thereof, it shall be lawful for the judge, in his discretion, to suspend or stay any judgment, order, or execution given, made, or issued in such action or matter, for such time and on such terms as the judge shall think fit, and so from time to time, until it shall appear that such cause of inability has ceased, or to order the discharge of any debtor confined in prison by order of a court who, on account of sickness, insanity, or other sufficient cause, ought, in the opinion of the judge, to be discharged." In December, 1894, the plaintiff recovered judgment against the defendant in the Westminster County Court for £50 and costs, in respect of damages for the breach of a covenant in a lease to repair. On the 6th of December the defendant made an application to the judge to permit him to pay the amount by instalments of £4 a week until the whole was paid off, on the ground that he was unable to pay the whole amount at once, and in support of his application gave some evidence as to the amount of his salary and as to the rent he had to pay. The judge decided that he had no power to direct the money to be paid by instalments, but made the following order: "I think that the defendant has not the means to pay, and that I have power to stay execution under section 153. I stay for two months, with liberty for the plaintiff to apply to take off the stay, officer of the court to receive any moneys paid in by the defendant." From this order the plaintiff appealed. It was urged on behalf of the judgment creditor that the judge's order was wrong, because the term, "other sufficient cause," in "sickness or other sufficient cause," is *noscitur a sociis*, and must refer to some physical cause, not mere inability to pay; and, further, because it compelled the plaintiff to receive payments on account contrary to section 105. For the defendant it was submitted that the judge had power to stay execution for any reasonable cause.

THE COURT (WILLS and WRIGHT, JJ.) allowed the appeal, and sent the case back to ascertain the cause of the defendant's inability to pay. Though the words of section 153 gave a wide discretion to the judge to suspend the operation of an execution, it was not intended that mere inability to pay should be considered as a sufficient cause. Those words "other sufficient cause" received some light from the words occurring later in the same section. For whereas in the first part of the section the words were "sickness or other sufficient cause," in the latter part they were "sickness, insanity, or other sufficient cause." It must mean something in the nature of an external cause, accounting for the inability to pay, tending to excuse non-payment, and making it reasonable that the man should not be called upon to pay. This must be so; for, with regard to the words in the latter part of the section, in far the larger number of cases where persons were committed on judgment summonses it was by way of punishment for dishonesty; and it could not be meant that the judge was to set them free before the expiration of the term of their imprisonment merely for inability to pay. What the judge had said in effect here was that the defendant might pay when he liked.—COUNSEL, *C. L. Attenborough; W. M. Thompson.* SOLICITORS, *Attenborough & Tyer; J. S. Merton.*

[Reported by C. G. WILBRAHAM, Barrister-at-Law.]

*** We regret that in our report of *Souter* v. *Davies and Others* last week (*ante*, p. 264) the names of counsel were accidentally omitted. They were W. Willis, Q.C., and Rorkill for the appellants, and H. T. Kemp for the respondent.

LAW SOCIETIES.

THE BIRMINGHAM LAW SOCIETY.

The following are extracts from the report of the committee:—

The late Mr. Thomas Horton.—It is with feelings of profound regret that your committee have to record the loss which not only this society, but the whole profession in Birmingham, have sustained by the death, on the 3rd of October last, of Mr. Thomas Horton. Mr. Horton had for many years been most closely associated with this society; his name appears on the roll of its presidents as having occupied that position from 1882 to 1885; but it is in connection with his work as its honorary secretary that he will be best and most gratefully remembered. This office he held from January, 1872, to March, 1882, and throughout those ten years he devoted himself to the duties of his post with a quiet, unostentatious zeal which none but those who were more closely associated with him could possibly realize.

Members.—Since the last annual meeting 9 new members have been elected, 5 have resigned, &c., and 4 have died; the number at present on the register is 293. Twenty-two barristers have subscribed for the privilege of using the library.

Law classes.—These classes have been conducted during the past year by Mr. Frank S. Pearson with undiminished energy and ability, and instead of having to deplore reduced numbers, and waning interest, your committee are able to congratulate the society on the undoubted success of the classes. They would again express to Mr. Pearson their warm appreciation of his work, and their confidence in the continued usefulness of the classes under his guidance.

Conditions of sale.—The attention of your committee has again been called to the subject of conditions of sale in the case of leaseholds, where the sale of part of a property comprised in an original lease is carried out by way of underlease. It appears that it is by no means uncommon in such a case for a stipulation to be introduced providing that the underlease and a counterpart thereof shall be prepared by the vendor's solicitor at the purchaser's expense. As recently as December, 1889, your committee had this matter under their consideration, as also the similar case where the particulars refer to a leasehold property as the subject of sale, but the conditions provide that the vendor (the freeholder) shall grant a lease of the property for the term and at the rent stated in the particulars, such lease and counterpart being also prepared by the vendor's solicitor at the purchaser's cost. On that occasion they passed the following resolution, a copy of which was sent to every member of the society:—"That in the opinion of this committee in all cases of sale and purchase where the assurance to the purchaser is taken by way of demise, it is the province of the *purchaser's* solicitor to prepare the assurance, as it would be in the case of a conveyance, the purchaser paying no costs to the vendor's solicitor in respect thereof." Your committee feel that it is very important that a uniform practice on the subject should prevail in this district; and it seems to them that the form of the condition in question is so unfair, both to purchasers and their solicitors, and is calculated to bring such discredit on the profession, that they have unanimously decided to bring the matter before the annual meeting of the society with a view to the passing of a bye-law on the subject. The president will, therefore, propose the resolution, notice of which will be found in the circular calling the meeting, and which is based on the lines of the resolution of 1889 above set out. It may be well to mention that with regard to the second of the two cases alluded to (*i.e.*, the creation by the freeholder of a leasehold interest), the circular of December, 1889, also pointed out that "the practice referred to is apt to mislead a purchaser, who, in the majority of cases, would not understand the effect of the provision, which . . . renders him liable to the obligation of an original lessee as compared with that of an assignee of an existing term."

Stamps on assignments of leaseholds subject to apportioned rents.—On the 17th of September last a circular-letter was issued by the Board of Inland Revenue in reference to the stamp duty on conveyances subject to apportioned rent-charges, pointing out that, in the opinion of the commissioners, *ad valorem* conveyance duty is payable in such cases "not only upon the consideration money paid down, but also upon the amount of the rent-charge payable . . . during a period of twenty years," and offering to accept the additional duty on any insufficiently stamped deed, if tendered within three months of the date of the circular. However startling such a contention might be, it seemed at first sight that the subject of the circular had little practical interest for conveyancers in this locality, where conveyances subject to rent-charges are seldom met with. But when it was understood that the commissioners considered "that the principle of their circular of the 17th of September applies to assignments of leaseholds subject to apportioned ground-rents, duty being chargeable on the capitalized rent, as in the case of the conveyance of freehold property subject to a rent-charge" (to quote from a letter to the Hon. Secretary), the matter assumed a different aspect. Quite recently the president of the Incorporated Law Society, U.K., has had an interview with the Inland Revenue authorities on the subject, and has pointed out, not only the practical impossibility of obtaining, for re-stamping, the numerous deeds which do not comply with these new requirements, but also that the mode of stamping hitherto adopted—namely, on the consideration money alone—has been tacitly accepted by the Board of Inland Revenue as sufficient. The consequence is that the Board will probably be prepared to issue a circular, stating that they will adjudicate as duly stamped (without payment of extra duty or penalty) any deeds dated before the date of their circular of the 17th of September, and which are within the classes of deeds which have been stamped according to the view of the law as it prevailed prior to the issue of that circular. As may be gathered from what has been said, your committee have been in communication on the subject both with the Incorporated Law Society, U.K., and with the Board of Inland Revenue.

UNION SOCIETY OF LONDON.

The society met at the Inner Temple Lecture-hall on Wednesday, February 13, Mr. Willson (president) in the chair. After the reading of the minutes of the preceding meeting and the disposal of private business Mr. Tudor Lay brought forward the motion standing in his name on the agenda paper—viz., "That a cordial understanding with Russia should be the keynote of England's foreign policy." Speakers: for, Mr. Tudor Lay and Mr. Junks; against, Messrs. Cator and Barlow, Dr. Bryett, and Messrs. Haythorne Reed and Willson. The motion was lost.

The society met at the Inner Temple Lecture-hall on Wednesday evening, the 20th inst., Mr. Willson (president) in the chair. After the reading of the minutes and the transaction of private business, Mr. Thomas J. Savage brought forward the motion on the agenda paper—viz., "It is desirable that the fusion of the two branches of the legal profession should be effected." Speakers: for, Messrs. Savage, Price, and Tudor Lay; against, Messrs. Kinipple, Haythorne Reed, Bennett, Jenks, and Willson. The motion was lost.

LEGAL NEWS.

APPOINTMENTS.

Mr. A. A. Maund, solicitor, of Worcester, has been appointed a Commissioner for Oaths. Mr. Maund was admitted in December, 1888.

Mr. W. F. Charles Suter has been appointed Sub-Librarian at Lincoln's-inn.

CHANGES IN PARTNERSHIPS.

Dissolutions.

William Ernest Hempson and James Frederick Elgar, solicitors (Hempson & Elgar), 35, King-street. Feb. 1. The said W. E. Hempson will continue to practise at the above address under the style of Hempson. [*Gazette*, Feb. 5.

Charles Henry Megson Robson and Thomas Hedley Smirk, solicitors (Robson & Smirk), Newcastle-upon-Tyne. Feb. 14.

[*Gazette*, Feb. 19.

GENERAL.

Mr. Justice Chitty was taken ill on Wednesday and had to retire from court. It is stated that he is suffering from a severe cold.

A meeting of the Council of the Society of Comparative Legislation will be held at the Imperial Institute, at 5.15 p.m., on Wednesday, the 27th inst., for the purpose of adding some names to the council and of appointing an executive committee.

COURT PAPERS.

SUPREME COURT OF JUDICATURE.

Rota of Registrars in Attendance on

Date.	Appeal Court No. 2.	Mr. Justice Chitty.	Mr. Justice North.
Monday, Feb. 25	Mr. Ward	Mr. Clowes	Mr. Godfrey
Tuesday 26	Pemberton	Jackson	Leach
Wednesday 27	Ward	Clowes	Godfrey
Thursday 28	Pemberton	Jackson	Leach
Friday, March 1	Ward	Clowes	Godfrey
Saturday 2	Pemberton	Jackson	Leach
	Mr. Justice Stirling.	**Mr. Justice Kekewich.**	**Mr. Justice Romer.**
Monday, Feb. 25	Mr. Rolt	Mr. Lavie	Mr. Pugh
Tuesday 26	Farmer	Carrington	Beal
Wednesday 27	Rolt	Lavie	Pugh
Thursday 28	Farmer	Carrington	Beal
Friday, March 1	Rolt	Lavie	Pugh
Saturday 2	Farmer	Carrington	Beal

WINDING UP NOTICES.

London Gazette.—Friday, Feb. 15.

JOINT STOCK COMPANIES.

Limited in Chancery.

D. W. Forbes & Co, Limited—By an order made by the Court, dated Jan 29, it was ordered that the voluntary winding up be continued. Bradshaw, 85, East India Dock rd, Poplar, solor for petner. All debts due to the company should be paid to Frank Drury, 11, Queen Victoria st

Nottingham Plate Glass and Boiler Insurance Co, Limited—Creditors are required, on or before March 1, to send their names and addresses, and particulars of their debts or claims, to Edward Moss, care of J. & A. Bright, 1, Pepper st, Nottingham, solors for liquidator

Stamp Distribution (Parent) Co, Limited—Petn for winding up, presented Feb 13, directed to be heard on Feb 27. Lewis, 14, South sq, Gray's inn, solor for petners. Notice of appearing must reach the abovenamed not later than 6 o'clock in the afternoon of Feb 26

Universal Patent Fuel Machine and Manufacturing Co, Limited—Creditors are required, on or before March 11, to send their names and addresses, and particulars of their debts or claims, to Everingham Smith, 7, Martin's lane, Cannon st Bower & Co, 4, Bream's bldgs, solors for liquidator

Unlimited in Chancery.

Kingston Cotton Mill Co—By an order made by Romer, J., dated Feb 4, it was ordered that the voluntary winding up be continued. Collyer-Bristow & Co, 4, Bedford row, solors for petners

London Gazette.—Tuesday, Feb. 12.

JOINT STOCK COMPANIES.

Limited in Chancery.

Brandon & Co, Limited—Creditors are required, on or before March 29, to send their names and addresses, and particulars of their debts or claims, to Chester Foulsham and Richard Cobden Michell, Mapesbury House, Brondesbury. Allen & Son, 17, Carlisle st, Soho sq, solors to liquidators

FRIENDLY SOCIETY DISSOLVED.

James Farrow Lodge 11, Loyal Order of British Shepherd Leigh Unity Society, Leigh, Lancs. Feb 9

CREDITORS' NOTICES.

UNDER ESTATES IN CHANCERY.

Last Day of Claim.

London Gazette.—Friday, Feb. 8.

Peters, Elizabeth Whitfield, Knighton, Radnorshire. March 5. Wallis v Peters, Kekewich, J. Wallis, Hereford

London Gazette.—Tuesday, Feb. 12.

Anwyl-Passingham, Robert Townshend, Berwynfa, Bala, Merioneth. March 11. Anwyl-Passingham v Anwyl-Passingham, Stirling, J. Peake & Co, Bedford row

Ralph, Andrew, Liverpool, Brushmaker. March 1. Grindley v Ralph, Registrar Liverpool. Seddon Bowman Smith, Liverpool

Renton, Mary Ann, Cornorphine Town, South Shields. March 7. Reed v Middleton, Registrar, Durham. Hannay, South Shields

London Gazette.—Friday, Feb. 15.

Clarke, William, Liverpool, Gent. March 15. Fannin v Meall, Registrar, Liverpool. Pennington, Liverpool

Gurr, Charles, Whitstable, Kent, Licensed Victualler. March 15. Neame v Gurr, Kekewich, J. Tassell, Faversham

Steward, John James, Elms Clifton, nr Rugby, Auctioneer. March 15. Swingler v Steward, Stirling, J. Weaver, Chester

BANKRUPTCY NOTICES.

London Gazette.—Friday, Feb. 15.

RECEIVING ORDERS.

Bennett, William, Dukinfield, Grocer Ashton under Lyne Pet Feb 12 Ord Feb 12

Bertolotto, Giuseppe, Newcastle on Tyne, Licensed Victualler Newcastle on Tyne Pet Feb 13 Ord Feb 13

Blakey, James, Leeds, Grocer Leeds Pet Feb 12 Ord Feb 12

Bond, Richard Thomas, Accrington, Draper Blackburn Pet Feb 11 Ord Feb 11

Clifford, Reuben, Willenhall, Brassfounder Wolverhampton Pet Feb 9 Ord Feb 11

Craven, Francis, Gt Grimsby, Butcher Gt Grimsby Pet Feb 12 Ord Feb 12

Devaney, John, Tunstall, Hay Dealer Hanley Pet Feb 13 Ord Feb 13

Ede, Frederick Henry, Ramsgate, Baker Canterbury Pet Feb 11 Ord Feb 11

Engley, James, Westleigh, Grocer Bolton Pet Feb 11 Ord Feb 11

Edwards, Thomas, Chigwell, Baker Chelmsford Pet Feb 8 Ord Feb 8

Field, William, Redbourn, Farmer St Albans Pet Feb 9 Ord Feb 9

Finn, Michael, Sheffield, Insurance Agent Sheffield Pet Feb 11 Ord Feb 11

Fletcher, Randall, Leeds Leeds Pet Feb 11 Ord Feb 11

Gildes, William, Smethwick, Baker West Bromwich Pet Feb 12 Ord Feb 12

Greenwell, Thomas, Newcastle on Tyne, Teacher of Dancing Newcastle on Tyne Pet Feb 13 Ord Feb 13

Gregory, John, Calne, Wilts, Miller Swindon Pet Feb 12 Ord Feb 12

Hedley, George, Medomsley, Mining Surveyor Durham Pet Feb 6 Ord Feb 6

Hiscox, John Henry Thomas, Southampton, Butcher Southampton Pet Feb 12 Ord Feb 12

Humfrey, Algernon Guise Pargeter, Thorpe Mandeville Banbury Pet Feb 9 Ord Feb 9

Iggulden, Margaret, Llanfairfechan, Hotel Keeper Bangor Pet Feb 13 Ord Feb 13

Jacobi, Gustav Emil Franz, Blackstock rd, Jeweller High Court Pet Feb 12 Ord Feb 13

Jarman, Charles, Bridgwater, Builder Bridgwater Pet Feb 11 Ord Feb 11

Jewsbury, Reuben, Nottingham, Grocer Nottingham Pet Feb 13 Ord Feb 13

Josselyn, James Steggall, Ely, Corn Merchant Cambridge Pet Feb 11 Ord Feb 11

Laycock, Edward, Leeds, Shoemaker Leeds Pet Feb 12 Ord Feb 12

Lewis, Hugh, Merthyr Tydfil, Flannel Manufacturer Merthyr Tydfil Pet Feb 12 Ord Feb 12

Mabon, Joseph, Heywood, Joiner Bolton Pet Feb 11 Ord Feb 11

McArdell, Leonard, Radcliffe Bolton Pet Jan 26 Ord Feb 11

Merrills, John, Metheringham Heath, Farmer Lincoln Pet Feb 12 Ord Feb 12

Minifil, Thomas, Stapleford, Salop, Farmer Madeley Pet Feb 12 Ord Feb 13

Parry, Alfred, and Carlisle Twining, St Mary Axe, Wine Merchants High Court Pet Feb 12 Ord Feb 12

Plevey, Richard Edward, Bewdley, Saddle Maker Kidderminster Pet Feb 11 Ord Feb 11

Pulsford, Henry, Minehead, Shipowner Taunton Pet Feb 11 Ord Feb 11

Robinson, William, Ilkeston, Grocer Derby Pet Feb 12 Ord Feb 12

Solaini, Henri Frederic, Liverpool, Architect Liverpool Pet Jan 24 Ord Feb 11

Stables, Alfred, Morley, Yorks, Joiner Dewsbury Pet Feb 13 Ord Feb 13

Startup, Benjamin, Carter lane, Plumber High Court Pet Feb 12 Ord Feb 12

Taylor, Thomas, Drinkstone Hall, Farmer Bury St Edmunds Pet Feb 11 Ord Feb 11

Thomas, Robert Alfred, Acton Scott, Farmer Leominster Pet Feb 13 Ord Feb 13

Trussell, Ernest Betjemann, Brighton, Fancy Stationer Brighton Pet Feb 11 Ord Feb 11

Webb, John, Wolverhampton, Beerhouse Keeper Wolverhampton Pet Feb 12 Ord Feb 13

The following amended notice is substituted for that published in the London Gazette of Jan. 25:—

Tonnies, Paul Louis George, Harleston, Commission Agent High Court Pet Jan 23 Ord Jan 23

The following amended notice is substituted for that published in the London Gazette of Jan. 29:—

Diment, Robert, Chard, Somersetshire, Farmer Taunton Pet Jan 8 Ord Jan 26

The following amended notice is substituted for that published in the London Gazette of Feb 5:—

Jenner, Bird St Alelyn, North Tawton, Gent Plymouth Pet Jan 31 Ord Jan 31

ORDER RESCINDING RECEIVING ORDER.

Steinmann, Ernest E, Clun, Salop, Farmer Leominster Rec Ord Sept 28, 1894 Resc Feb 11, 1895

FIRST MEETINGS.

Andrean, Walter, Fulham, Electrical Engineer Feb 22 at 12 Bankruptcy bldgs, Carey st

Birley, Samuel Joseph, Long Eaton, Lacemaker Feb 22 at 12 Off Rec, St James's chmbrs, Derby

Bond, Richard Thomas, Accrington, Draper March 6 at 2.30 County Court House, Blackburn

Clay, George Frederick, Kimberley, Plumber Feb 22 at 11 Off Rec, St Peter's Church walk, Nottingham

Colton, William, Southampton, Florist Feb 26 at 12 Off Rec, 4, East st, Southampton

Cook, Charles, Bournemouth, Tobacconist Feb 23 at 12.30 Off Rec, Salisbury

Cooper, John, Leicester, Boot Manufacturer Feb 22 at 12.30 Off Rec, 1, Berridge st, Leicester

Denny, George, Preston Bissett, Bricklayer Feb 23 at 12 Off Rec, Oxford

Dickerson, James, Gt Yarmouth, Baker Feb 23 at 1 Off Rec, 8, King st, Norwich

Edgley, James, Westleigh, Grocer March 25 at 2.30 16, Wood st, Bolton

Edmondson, Henry, Handsworth, Builder Feb 22 at 2.30 Off Rec, Figtree lane, Sheffield

Finn, Michael, Sheffield, Insurance Agent Feb 23 at 9 Off Rec, Figtree lane, Sheffield

GOOCH, STEWARD GOODWIN, Gt Coggeshall, Innkeeper Feb 25 at 1 Surridge & Sons, Auctioneers, Coggeshall
GREENGROVE, ALFRED, Staplehurst, Farmer March 4 at 11.15 Off Rec, Week st, Maidstone
HALL, GEORGE AUGUSTUS, and STANFORD JOHN HALL, Uttoxeter, Butchers Feb 22 at 2.30 Off Rec, St James's chmbrs, Derby
HISCOX, JOHN HENRY THOMAS, Southampton, Commercial Traveller Feb 26 at 12.30 Off Rec, 4, East st, Southampton
HURLEY, JAMES, and JOHN HURLEY, Bromsgrove, Fruit Dealers March 1 at 11 23, Colmore row, Birmingham
JONES, WILLIAM, Upper Llandwrog, Quarry Labourer Feb 22 at 1.45 Prince of Wales Hotel, Carnarvon
JOSEPH, MICHAEL, Gracechurch st, Company Promoter Feb 22 at 2.30 Bankruptcy bldgs, Carey st
JOSSELYN, JAMES STRODALL, Ely, Corn Merchant March 1 at 12 Off Rec, 5, Petty Cury, Cambridge
LEE, WILLIAM, and WILLIAM KEMP, Birmingham, Bakers Feb 25 at 11 23, Colmore row, Birmingham
LEWIS, ALBERT OWEN, Ton Pentre, Linen Draper Feb 22 at 12 Off Rec, 65, High st, Merthyr Tydfil
LORTON, LOUIS G, Mark lane, Wine Agent Feb 26 at 12 Bankruptcy bldgs, Carey st
MASON, JOSEPH, Heywood, Undertaker Feb 25 at 2 16, Wood st, Bolton
MCARDELL, LEONARD, Radcliffe, Letterpress Printer Feb 25 at 3 16, Wood st, Bolton
MCCLELLAN, SAMUEL, Blackburn, Commission Agent March 6 at 2 County Court house, Blackburn
MERRILLS, JOHN, Metheringham Heath, Farmer Feb 28 at 12.30 Off Rec, Lincoln
MORGAN, FRANK, Pentonville rd, Cycle Manufacturer Feb 25 at 12 Bankruptcy bldgs, Carey st
ONIONS, THOMAS, Oldbury, Fruiterer March 6 at 2 County Court, West Bromwich
PENNINGTON, JAMES, Latchford, Flour Dealer March 1 at 11.15 Court house, Upper Bank st, Warrington
PLAYDELL, WALTER, Fulham, Turf Accountant Feb 25 at 11 Bankruptcy bldgs, Carey st
PULSFORD, HENRY, Minehead, Shipowner Feb 23 at 2 Off Rec, 5a, Hammet st, Taunton
ROBERTS, WILLIAM HOLDSWORTH, New Wortley, Insurance Agent Feb 25 at 11 Off Rec, 22, Park row, Leeds
ROYLE, WILLIAM CRAIG, Manchester, Commission Agent Feb 22 at 3 Ogden's chmbrs, Bridge st, Manchester
SCOTT, JOHN, Dalston, Cumbrid, Builder Feb 22 at 11 12, Lonsdale st, Carlisle
SIMS, SAMUEL, Girton, Farmer Feb 22 at 12 Off Rec, St Peter's Church walk, Nottingham
SMITH, THOMAS EPHRAIM, Loughborough, Milkseller Feb 22 at 3 Off Rec, 1, Berridge st, Leicester
STEVENSON, CHARLES, Hoxton, Retailer of Wines Feb 22 at 12 Bankruptcy bldgs, Carey st
TAYLOR, FREDERICK JOHN, Upper Kennington lane, Licensed Victualler Feb 25 at 12 Bankruptcy bldgs, Carey st
TAYLOR, HARRY FRANCIS, Camberley, Licensed Victualler Feb 25 at 12 24, Railway app, London Bridge
TAYLOR, SAMUEL, Stanley, Bricklayer Feb 22 at 11 Off Rec, Bond ter, Wakefield
WARREN, JOHN, Newall, Fruiterer March 20 at 11.30 Midland Hotel, Station st, Burton on Trent
WATSON, JOHN ALBERT, Sheffield, Brick Manufacturer Feb 22 at 2 Off Rec, Figtree lane, Sheffield
WILLIAMS, WILLIAM, Tylorstown, Checkweigher Feb 22 3 Off Rec, 65, High st, Merthyr Tydfil

ADJUDICATIONS.

BENNINGHOVEN, WILLIAM, Sheffield Sheffield Pet Jan 25 Ord Feb 13
BERTOLOTTO, GIUSEPPE, Newcastle on Tyne, Licensed Victualler Newcastle on Tyne Pet Feb 13 Ord Feb 13
BLACKWELL, GEORGE WILLIAM, and WILLIAM JAMES MAWDITT, Birmingham, Builders Walsall Pet Jan 10 Ord Feb 11
BLAKELY, JAMES, Leeds, Grocer Leeds Pet Feb 12 Ord Feb 12
BOND, RICHARD THOMAS, Accrington, Draper Blackburn Pet Feb 11 Ord Feb 11
CHARLESWORTH, JAMES, Kingston upon Hull, Auctioneer Kingston upon Hull Pet Jan 1 Ord Feb 11
CLIFFORD, REUBEN, Willenhall, Brassfounder Wolverhampton Pet Feb 9 Ord Feb 11
CRAVEN, FRANCIS, Gt Grimsby, Butcher Gt Grimsby Pet Feb 12 Ord Feb 12
DEVANEY, JOHN, Tunstall, Straw Dealer Hanley Pet Feb 13 Ord Feb 13
EDE, FREDERICK HENRY, Ramsgate, Baker Canterbury Pet Feb 11 Ord Feb 11
EDGLEY, JAMES, Westleigh, Grocer Bolton Pet Feb 11 Ord Feb 12
FLETCHER, RANDALL, Leeds, Licensed Victualler Leeds Pet Feb 11 Ord Feb 11
FINN, MICHAEL, Sheffield, Insurance Agent Sheffield Pet Feb 8 Ord Feb 11
GILDER, WILLIAM, Smethwick, Baker West Bromwich Pet Feb 11 Ord Feb 12
GREENWELL, THOMAS, Newcastle on Tyne, Teacher of Dancing Newcastle on Tyne Pet Feb 13 Ord Feb 13
GREGORY, JOHN, Calne, Miller Swindon Pet Feb 11 Ord Feb 12
GROSSMAN, LEONARD GURNEY, Long acre, Leather Merchant High Court Pet Jan 23 Ord Feb 9
HEDLEY, GEORGE, Mining Surveyor Durham Pet Feb 6 Ord Feb 6
HOLMES, JOHN, and WILLIAM HENRY JOWETT, Blackpool, Joiners Preston Pet Feb 1 Ord Feb 12
HUSTLER, GEORGE, Coleford Newport, Mon Pet Jan 19 Ord Feb 6
IGGULDEN, MARGARET, Llanfairfechan, Hotel Keeper Bangor Pet Feb 13 Ord Feb 13
JACOBI, GUSTAV EMIL FRANZ, Blackstock rd, Jeweller High Court Pet Feb 12 Ord Feb 13
JARMAN, CHARLES, Bridgwater, Builder Bridgwater Pet Feb 11 Ord Feb 11
JEWSBURY, REUBEN, Nottingham, Grocer Nottingham Pet Feb 13 Ord Feb 13
JONES, T B, Mile End rd, Draper High Court Pet Dec 22 Ord Feb 9
JOSSELYN, JAMES STRODALL, Ely, Corn Merchant Cambridge Pet Feb 11 Ord Feb 11
LAYCOCK, EDWARD, Leeds, Shoemaker Leeds Pet Feb 12 Ord Feb 12
MASON, JOSEPH, Heywood, Joiner Bolton Pet Feb 11 Ord Feb 11
MERRILLS, JOHN, Metheringham Heath, Farmer Lincoln Pet Feb 12 Ord Feb 12
PLEVEY, RICHARD EDWARD, Bewdley, Saddle Manufacturer Kidderminster Pet Feb 11 Ord Feb 11
POSTHOUS, EMMA, Pangbourne, Widow Reading Pet Dec 18 Ord Feb 11
PULSFORD, HENRY, Minehead, Shipowner Taunton Pet Feb 11 Ord Feb 11
REDFERN, ALFRED ERNEST BOOTH, Birmingham, Butcher Birmingham Pet Jan 14 Ord Feb 12
ROBINSON, WILLIAM, Ilkeston, Grocer Derby Pet Feb 11 Ord Feb 12
SMITH, MONTAGUE FRANK, and JOHN WILLIAM CARR, King's Lynn, Coal Merchants King's Lynn Pet Nov 29 Ord Feb 13
STABLES, ALFRED, Morley, Joiner Dewsbury Pet Feb 12 Ord Feb 13
STARTUP, BENJAMIN, Carter lane, Plumber High Court Pet Feb 12 Ord Feb 12
TAYLOR, THOMAS, Drinkstone Hall, Suffolk, Farmer Bury St Edmunds Pet Feb 11 Ord Feb 11
THOMAS, ROBERT ALFRED, Acton Scott, Farmer Leominster Pet Feb 11 Ord Feb 13
TROUNCER, THOMAS CHARLES, Shrewsbury, Brewer Shrewsbury Pet Jan 26 Ord Feb 9
TRUSSELL, ERNEST BETJEMANN, Brighton, Stationer Brighton Pet Feb 11 Ord Feb 11
VINE, JOB, Sydling St Nicholas, Yeoman Dorchester Pet Jan 28 Ord Feb 13
WRIGHT, THOMAS PEARSON, Rednall, Farmer Birmingham Pet Feb 4 Ord Feb 13

The following amended notice is substituted for that published in the London Gazette, Jan. 29 :—

TOWNSEND, PAUL LOUIS GEORGE, Harlesden, Commission Agent High Court Pet Jan 23 Ord Jan 28

London Gazette.—TUESDAY, Feb. 19.

RECEIVING ORDERS.

ADAMS, THOMAS PEREGRINE, Bromyard, Farmer Worcester Pet Jan 19 Ord Feb 16
BAKER, GEORGE HOOK, Mitcheldean, Carpenter Gloucester Pet Feb 14 Ord Feb 14
BEHRE, WILHELM, Manchester, Prof of Music Manchester Pet Feb 14 Ord Feb 14
BISCOE, HENRY FREWEKER, Greenford Brentford Pet Jan 15 Ord Feb 13
BOSTON, RICHARD E, Ramsgate, China Dealer Canterbury Pet Jan 30 Ord Feb 15
CARTER, CLEMENT CECIL, Freiston, Farmer Boston Pet Jan 30 Ord Feb 13
CAVE, WILLIAM, Plymouth, Butcher Plymouth Pet Feb 15 Ord Feb 15
DAMES, GEORGE, Chale, I W, Hotel Proprietor Ryde Pet Feb 8 Ord Feb 8
DYE, GEORGE, Norwich, Builder Norwich Pet Feb 8 Ord Feb 14
GLOVER, WILLIAM SCOTTEN, Sharnford, Carpenter Leicester Pet Feb 16 Ord Feb 16
HANCOCKS, WILLIAM HOOPER, Handsworth, Schoolmaster Birmingham Pet Feb 15 Ord Feb 15
LAWLEY, WILLIAM, Fallowfield Manchester Pet Jan 29 Ord Feb 14
MILLER, ROBERT, Ebbw Vale, Mon, Draper Tredegar Pet Feb 16 Ord Feb 16
ROBERTS, WILLIAM GEORGE, Nottingham, Tailor Nottingham Pet Feb 15 Ord Feb 15
ROLFE, GEORGE CARTER, Hinxhill, Farmer Canterbury Pet Jan 21 Ord Feb 15
ROSENBERG, JACOB, Spitalfields, Baker High Court Pet Feb 15 Ord Feb 15
RUSSELL, DAVID, Stalybridge, Licensed Victualler Ashton under Lyne Pet Feb 15 Ord Feb 15
SADLER, ARTHUR JOHNSON, Minskipp, Yorks, Grocer Northallerton Pet Feb 14 Ord Feb 14
SAGAR, BENJAMIN, Manchester, Cloth Agent Manchester Pet Feb 9 Ord Feb 15
SANDERS, CATHARINE, Ryde, Licensed Victualler Ryde Pet Feb 8 Ord Feb 8
SANDERS, WILLIAM HARRISON, Folkestone, Carpenter Canterbury Pet Feb 16 Ord Feb 16
SHART, HENRY, King's Lynn, Grocer King's Lynn Pet Feb 14 Ord Feb 14
STUBBS, THOMAS, Sunderland, Publican Sunderland Pet Feb 14 Ord Feb 14
SYMINGTON, SAM, Leamington, Tailor Warwick Pet Feb 15 Ord Feb 15
THURKETTLE, WILLIAM, Long Whatton, Farmer Leicester Pet Feb 14 Ord Feb 14
TODD, JAMES, Yorks, General Dealer York Pet Feb 14 Ord Feb 14
TROTHAM FREDERICK, Henley on Thames, Hotel Proprietor High Court Pet Feb 16 Ord Feb 16
TROTHAM, MARGARET ELIZABETH, and JOHN ALEXANDER MACBETH, Holloway rd, Licensed Victualler High Court Pet Feb 15 Ord Feb 15
VEAL, THOMAS STARY, Barrow in Humber, Tailor Gt Grimsby Pet Feb 16 Ord Feb 16
WATSON, WILLIAM, Maidstone, Hop Ale Manufacturer Maidstone Pet Feb 16 Ord Feb 16
WRIGHT, ELIAS GEORGE, Guildford, Coal Merchant Guildford Pet Feb 13 Ord Feb 13
YORK, ARTHUR FERDINAND, Wolverhampton, Hardware Merchant Wolverhampton Pet Feb 15 Ord Feb 16

The following amended notice is substituted for that published in the London Gazette of Jan. 29 :—

CARLESS, EDWARD FRANCIS, Birmingham, Coal Merchant Birmingham Pet Jan 5 Ord Jan 24

The following amended notice is substituted for that published in the London Gazette of Feb. 5 :—

WILLIAMS, EVAN JOSEPH, Llanelly, Draper Carmarthen Pet Feb 1 Ord Feb 1

The following amended notices are substituted for those published in the London Gazette of Feb. 15 :—

HEDLEY, GEORGE, Mining Surveyor Durham Pet Feb 6 Ord Feb 6
MINIFIE, THOMAS, Stapleford, Salop, Farmer Madeley Pet Feb 12 Ord Feb 13

FIRST MEETINGS.

AINSWORTH, JAMES, Southport, Bookseller Feb 27 at 3 Off Rec, 35, Victoria st, Liverpool
BILBY, CHARLEY CARLOS, Buton, Norfolk, Farmer March 2 at 11.30 Off Rec, 8, King st, Norwich
BRASNETT, ERNEST EDWARD, Hopton, Suffolk, Farmer March 2 at 12.30 Off Rec, 8, King st, Norwich
CARLESS, EDWARD FRANCIS, Birmingham, Coal Merchant Feb 27 at 11 23, Colmore row, Birmingham
CLIFFORD, REUBEN, Willenhall, Brass Founder Feb 27 at 3 Off Rec, Wolverhampton
DAUGHTERY, DOWNES, Pulborough, Farmer Feb 26 at 2.15 Swan Hotel, Pulborough
DAVENPORT, WILLIAM, Oldham, Tailor Feb 26 at 11 Off Rec, Bank chmbrs, Queen st, Oldham
DEVANEY, JOHN, Tunstall, Straw Dealer Feb 27 at 11.15 Off Rec, Newcastle under Lyme
DIX, JOSEPHUS WALTER, Weston super Mare, Tobacconist Feb 28 at 11 Bristol Arms Hotel, Bridgwater
DULCKEN, E G, & Co, Billiter st, Iron Merchants Feb 27 at 12 Bankruptcy bldgs, Carey st
EDWARDS, FLORENCE, Porth, Glam, Outfitter Feb 26 at 3 Off Rec, 65, High st, Merthyr Tydfil
EGAN, R, jun, Tottenham, Butcher Feb 28 at 12 Off Rec, 95, Temple chmbrs, Temple avenue
EVANS, THOMAS DAVID, Ealing, Builder Feb 26 at 3 Off Rec, 95, Temple chmbrs, Temple avenue
FIELD, WILLIAM, Redbourn, Farmer Feb 27 at 12 George Annesley, solor, Verulam st, St Albans
GLOSSOP, JAMES, and GEORGE WOODS, Leeds, Saddler March 1 at 2 Leeds Law Institution, 1a, Albion pl, Leeds
GOUDIE, ROBERT SIMPSON, Haverstock Hill, Licensed Victualler Feb 26 at 12 Bankruptcy bldgs, Carey st
GRAVES, EDWARD, and JOHN BYGRAVE, Lower Kennington lane, Grocers Feb 26 at 2.30 Bankruptcy bldgs, Carey st
GRAY, EDGAR, Old Broad st Feb 26 at 11 Bankruptcy bldgs, Carey st
HART, JOHN, Brighton, Fishmonger Feb 27 at 12 Off Rec, 4, Pavilion bldgs, Brighton
HEDLEY, GEORGE, Witton Park, Durham Feb 26 at 12 Off Rec, 25, John st, Sunderland
JACOBI, GUSTAV EMIL FRANZ, Blackstock rd, Watchmaker Feb 27 at 11 Bankruptcy bldgs, Carey st
JARMAN, CHARLES, Bridgwater, Builder Feb 26 at 11 Tamlyn, High st, Bridgwater
JENNER, BIRT ST ALDYN, North Tawton, Gent Feb 26 at 2.30 Bankruptcy bldgs, Carey st
JONES, DAVID WILLIAM, Porth, Licensed Victualler Feb 26 at 12 Off Rec, 65, High st, Merthyr Tydfil
LAYCOCK, EDWARD, Leeds, Shoemaker Feb 27 at 11 Off Rec, 22, Park row, Leeds
LEWIS, HERBERT, Belbroughton, Butcher Feb 26 at 10.30 Off Rec, 45, Copenhagen st, Worcester
LEWIS, WILLIAM, Swansea, Grocer Feb 27 at 12 Off Rec, 31, Alexandra rd, Swansea
MELTON, SAMUEL ROBERT, Richmond Feb 28 at 12.30 24, Railway app, London Bridge
MINIFIE, THOMAS, Stableford, Salop, Farmer Feb 26 at 12.45 Crown Hotel, Bridgnorth
MOSS, MARY, Wolverhampton, Grocer March 4 at 11 Off Rec, Wolverhampton
NEWTON, THOMAS, Knutsford, Plumber Feb 27 at 3 Ogden's chmbrs, Bridge st, Manchester
PARKER, GEORGE, Hemsworth, Builder Feb 26 at 11 Off Rec, 6, Bond ter, Wakefield
PARRY, ALFRED, and CARLISLE TWINING, St Mary Axe, Wine Merchants Feb 28 at 12 Bankruptcy bldgs, Carey st
PAYNTER, HENRY, Cardiff, Stationer Feb 28 at 11 Off Rec, 29, Queen st, Cardiff
PEARSON, JOHN, Stockton on Tees, Coach Maker Feb 27 at 3 Off Rec, 8, Albert st, Middlesborough
POSTHOUS, EMMA, Pangbourne, Widow Feb 26 at 12 Off Rec, 95, Temple chmbrs, Temple avenue
ROBINSON, WILLIAM, Ilkeston, Grocer Feb 28 at 2.30 Off Rec, 26 James's chmbrs, Derby
ROLFE, WALTER, Willesborough, Farmer Feb 26 at 3 Sarscen's Head Hotel, Ashford, Kent
SMITH, JAMES, High Wycombe, Timber Merchant Feb 27 at 3 Off Rec, 26 Alfate's, Oxford
STABLES, ALFRED, Morley, Yorks, Joiner Feb 26 at 3 Off Rec, Bank chmbrs, Batley
STRINGER, JOSEPH, Bangor, Auctioneer Feb 26 at 2.30 Crypt chmbrs, Chester
TAYLOR, THOMAS, Drinkstone, Farmer Feb 27 at 12 Guildhall, Bury St Edmunds
THOMPSON, W H, Upper Tooting Feb 27 at 11.30 24, Railway approach, London Bridge
THURKETTLE, WILLIAM, Long Whatton, Farmer Feb 26 at 12.30 Off Rec, 1, Berridge st, Leicester
TODD, JAMES, York, General Dealer Feb 28 at 12.30 Off Rec, 28, Stonegate, York
TODMAN, JOSEPH TOM, Colombo, Electrician April 30 a 11 Bankruptcy bldgs, Carey st
TRUSSELL, ERNEST BETJEMANN, Brighton, Fancy Stationer Feb 28 at 1 Off Rec, 24, Railway approach, London Bridge
WILKINSON, WILLIAM, Great Ayton, Miller March 6 at 3 Off Rec, 8, Albert rd, Middlesborough
WITTLE, EDWARD JOHN WILLIAM, Monkwell st, Warehouseman Feb 27 at 2.30 Bankruptcy bldgs, Carey st

ADJUDICATIONS.

BAKER, GEORGE HOOK, Mitcheldean, Carpenter Gloucester Pet Feb 14 Ord Feb 14
BEHRE, WILHELM, Manchester, Prof of Music Manchester Pet Feb 14 Ord Feb 14

BENNET, WILLIAM, Dukinfield, Grocer Stalybridge Pet Feb 12 Ord Feb 15
CAVE, WILLIAM, Plymouth, Butcher Plymouth Pet Feb 15 Ord Feb 15
COLTON, WILLIAM, Southampton, Florist Southampton Pet Feb 9 Ord Feb 15
COSTE, EDMUND JOHN, Coleman st, Licensed Victualler High Court Pet Jan 23 Ord Feb 13
DAMES, GEORGE, Chale, I W, Hotel Proprietor Ryde Pet Feb 8 Ord Feb 8
DENNY, GEORGE, Preston Bissett, Bricklayer Banbury Pet Jan 26 Ord Feb 14
DINNEY, ROBERT, Chard, Farmer Taunton Pet Jan 8 Ord Feb 14
DYE, GEORGE, Norwich, Builder Norwich Pet Feb 8 Ord Feb 16
EDWARDS, THOMAS, Chigwell Row, Baker Chelmsford Pet Feb 8 Ord Feb 13
GATFIELD, M, Fleet, Builder Guildford Pet Jan 21 Ord Feb 14
GOUDIE, ROBERT SIMPSON, Haverstock Hill, Licensed Victualler High Court Pet Jan 9 Ord Feb 14
HART, JOHN, Brighton, Fishmonger Brighton Pet Jan 16 Ord Feb 15
HISCOX, JOHN HENRY THOMAS, Southampton, Traveller Southampton Pet Feb 12 Ord Feb 14
JOSEPH, MICHAEL, Gracechurch st, Company Promoter High Court Pet Dec 21 Ord Feb 9
LINGWOOD, FRANCIS, Lower Clapton, Bead Importer High Court Pet Jan 21 Ord Feb 13
MCARDELL, LEONARD, Radcliffe, Letterpress Printer Bolton Pet Jan 24 Ord Feb 14
MILLER, ROBERT, Ebbw Vale, Mon, Draper Tredegar Pet Feb 12 Ord Feb 16
NICHOLSON, FRANK, St Leonards, Coal Merchant Hastings Pet Jan 14 Ord Feb 14
PAYNE, FANNY, Liss, Spinster Portsmouth Pet July 30 Ord Feb 13
PEABODY, JOHN, Coalville, Watchmaker Leicester Pet Nov 30 Ord Jan 2
ROBERTS, WILLIAM GEORGE, Nottingham, Tailor Nottingham Pet Feb 15 Ord Feb 15
RUSSELL, DAVID, Stalybridge, Licensed Victualler Stalybridge Pet Feb 15 Ord Feb 15
SADLER, ARTHUR JOHNSON, Minskipp, Yorks, Grocer Northallerton Pet Feb 14 Ord Feb 14
SANDERS, CATHERINE, Ryde, Licensed Victualler Ryde Pet Feb 8 Ord Feb 8
SANDERS, WILLIAM HARRISON, Folkestone, Carpenter Canterbury Pet Feb 16 Ord Feb 16
SAVILLE, JOHN HALL, Southport, Cotton Spinner Oldham Pet Dec 19 Ord Feb 14
SHANT, HENRY, King's Lynn, Grocer King's Lynn Pet Feb 14 Ord Feb 16
TODD, JAMES, York, General Dealer York Pet Feb 14 Ord Feb 15
VEAL, THOMAS START, Barrow on Humber, Tailor Great Grimsby Pet Feb 16 Ord Feb 16
WHITEHEAD, HERBERT HOWARD, Preston, Commission Salesman Pet Jan 24 Ord Feb 16
YORK, ARTHUR FERDINAND, Wolverhampton, Hardware Merchant Wolverhampton Pet Feb 15 Ord Feb 16

The following amended notice is substituted for that published in the London Gazette of Jan. 29 :—

CARLESS, EDWARD FRANCIS, Birmingham, Coal Merchant Birmingham Pet Jan 3 Ord Jan 25

The following amended notice is substituted for that published in the London Gazette of Feb. 15 :—

HEDLEY, GEORGE, Witton pk, co Durham, Mining Surveyor Durham Pet Feb 6 Ord Feb 6

ADJUDICATION ANNULLED.

MORGAN, F J, West Chapel st, Mayfair, Gent High Court Adjud Dec 4, 1885 Annul Feb 13, 1895

SALES OF ENSUING WEEK.

Feb. 26.—Messrs. DEBENHAM, TEWSON, FARMER, & BRIDGEWATER, at the Mart, E.C., at 2 o'clock, Freehold Ground-rent (see advertisement, Feb. 9, p. 4).
Feb. 26.—Messrs. BEAN, BURNETT, & ELDRIDGE, at the Mart, E.C., Old Life Policies (see advertisement, Feb. 16, p. 2; this week, p. 290).
Feb. 26.—Messrs. W. W. READ & Co., at the Mart, E.C., at 2 o'clock, Freehold and Leasehold Ground-rents, Profit Rental (see advertisement, Feb. 16, p. 2).
Feb. 27.—Messrs. FURBER, PRICE, & FURBER, at the Mart, E.C., at 2 o'clock, Freehold Ground-rents and £1,400 Perpetual 4 per Cent. Debenture Stock (see advertisement, Feb. 16, p. 2; this week, p. 290).

An exceptionally well-secured Freehold Ground-rent of £250 per annum, derived from property producing about £763 per annum, with reversion to that rack rental at the end of 49½ years.

Sale of Old Life Policies by

By Order of the Mortgagees.—Valuable Reversion and Policy of Assurance.

By direction of Trustees.—First-class Investments.

SALES BY AUCTION FOR THE YEAR 1895.

SALE DAYS FOR THE YEAR 1895

To EXECUTORS.—VALUATIONS.

AUCTION SALES AT DEPTFORD, WOOLWICH, LONDON, AND ELSEWHERE.